

Exhibit 36

Deposition of Robert Topel
(December 5, 2017) (excerpted)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

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VIDEOTAPED DEPOSITION OF ROBERT TOPEL

Washington, D.C.

December 5, 2017

9:34 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No. 52568

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<p style="text-align: right;">18</p> <p>1 would result in lower compensation for workers in 2 that market? 3 A. What was the preface to that? 4 Q. Higher levels of monopsony power in a 5 labor -- 6 A. You say would I agree and then -- 7 Q. All things equal. 8 A. All things equal. Sorry. We're talking 9 -- forgive us, Tina. 10 MR. ISAACSON: Maybe repeat the 11 question. 12 MR. CRAMER: Yes, I will. 13 BY MR. CRAMER: 14 Q. Would you agree that all things equal 15 higher levels of monopsony power in a labor market 16 would result in lower compensation for workers in 17 that market? 18 A. If we're in a market where everybody is 19 paid the same price, yes. 20 Q. What do you mean by that, where everyone 21 is same -- paid the same price? 22 A. Well, the -- just as in the usual case of 23 monopoly where we're talking about a single price 24 seller, then a greater degree of market power on 25 the output side will result in a higher price</p>	<p style="text-align: right;">20</p> <p>1 Q. Monopsony power is measured in degrees. A 2 firm can have a lot of monopsony power and a small 3 amount of monopsony power, correct? 4 A. I presume you're talking about different 5 firms, but, yes, okay. 6 Q. Or over time? 7 A. Yeah. 8 Q. Would you agree that the degree to which 9 firms in a market pay workers less than their 10 marginal revenue product depends on the elasticity 11 of labor supply? 12 A. To the firm. 13 Q. To the firm. 14 A. Yes. 15 Q. So the answer is yes. 16 Is it fair to say that even though a firm 17 with some degree of monopsony power pays its 18 workers below the worker's marginal revenue product 19 that the worker pay is nonetheless correlated with 20 the marginal revenue product? 21 A. You mean that you're moving up and down 22 along an upward sloping supply curve? 23 Q. Yes. 24 A. So in something that increases -- with 25 rising supply price something that increases</p>
<p style="text-align: right;">19</p> <p>1 because demand is more inelastic and every 2 seller -- every unit has to trade for the same 3 price. So if I want to expand at the margin -- 4 sales at the margin I have to reduce price on every 5 unit. And the issue here is that if I want to 6 expand employment at the margin and I face rising 7 supply price, then I have to pay every unit more. 8 Q. When you say you face rising supply price, 9 is that the same as a downward sloping supply 10 curve -- I'm sorry -- upward sloping supply -- 11 A. Yeah, you don't want a downward sloping 12 supply curve. 13 Q. Upward sloping supply curve. 14 A. Demand down, supply up. 15 Q. Okay. 16 A. Yeah. Yeah, upward sloping. The firm 17 itself faces an upward sloping supply curve. 18 Q. And when a firm faces an upward sloping 19 supply curve, that firm by definition has monopsony 20 power; is that correct? 21 A. Has some degree of -- the term "monopsony 22 power" is dangerous, as you know, the way the term 23 monopoly power is dangerous. It has some market -- 24 some power some influence over the price at which 25 it transacts.</p>	<p style="text-align: right;">21</p> <p>1 marginal revenue product would cause you to move 2 out along the -- along the average factor cost 3 curve; is that what you're saying? 4 Q. Well, let me ask it this way. Is it fair 5 to say that, all things equal, when marginal 6 revenue product of a firm's workers rise, a firm 7 with monopsony power will pay its workers more? 8 A. Yeah. Over the -- over some period of 9 time, yeah. There's contracts and things like 10 that. Some simple shocks are not going to do it. 11 Q. But over some period of time, all things 12 equal, when a firm's marginal revenue of product of 13 its workers rises, a firm with monopsony power will 14 pay its workers more; is that fair? 15 A. I think that's fair, yeah. 16 Q. And similarly, all things equal, when the 17 marginal revenue product of a firm falls over time 18 a firm with monopsony power will pay its workers 19 less; is that fair? 20 A. Moving along an average factor cost curve 21 which you've presumed to slope up. So that's 22 fair. 23 Q. And that condition that the supply curve 24 is presumed to slope up is another way of saying 25 that the firm has monopsony power; is that right?</p>

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<p style="text-align: right;">22</p> <p>1 A. Well, we came -- we just came back to this 2 term "monopsony power." There always -- you know, 3 if this was a -- an antitrust case in the output 4 market. The term is a little dangerous. 5 There's -- there's some influence that the firm has 6 over the price because supply slopes up. 7 Q. And the textbook definition of monopsony 8 power is a -- is -- is where there's an upper 9 sloping supply curve, correct? I know you don't 10 like the term, but -- 11 A. Yeah. If there's -- if -- I'm sorry, 12 Tina. If you have some influence over -- the 13 necessary condition for a firm with some monopsony 14 power that's paying a single price is to -- or with 15 some degree of market power in the input market is 16 a rise -- a rising supply price, rising average 17 factor cost. 18 Q. And so all things equal, when marginal 19 revenue of product falls a firm facing an upper 20 sloping supply curve will pay its workers less; is 21 that fair? 22 A. Over some period of time all other things 23 equal and so on. So yes. 24 Q. Would you turn to paragraph 311 of your 25 report, please.</p>	<p style="text-align: right;">24</p> <p>1 generate more revenues when they fight; is that 2 fair? 3 A. Yes. As you look down there to 313, A 4 multiplies L, where this is -- L is the employment 5 of factors by this firm called one, and larger A 6 means each unit of L produces more units of labor 7 service. 8 Q. So what you're saying is that Zuffa is 9 particularly good at causing the marginal revenue 10 product of its fighters to increase over time, 11 correct? 12 A. Well, let's just be careful. I'm making 13 an assumption above about A and the cost function C 14 of A. So this is in the context of this model -- 15 and I'm letting Zuffa be firm 1 here. So in the 16 context of this model I'm not making a statement of 17 fact about Zuffa. I'm saying if Zuffa is this firm 18 and this is what Zuffa does, then that's the 19 outcome. 20 Q. Okay. So if what Zuffa does is makes 21 it -- make its fighters more effective revenue 22 generators, then what you were saying is that Zuffa 23 in this example is causing the marginal revenue 24 product of its fighters to increase, correct? 25 A. Yes.</p>
<p style="text-align: right;">23</p> <p>1 A. This is the appendix? 2 Q. It is the appendix, Appendix A. 3 A. Yes. 4 Q. The third -- third sentence of Appendix A 5 says "In other words, Zuffa is better than its 6 competitor at making its athletes more effective 7 revenue generators"; do you see that? 8 A. Yes. 9 Q. What do you mean by that? 10 A. Well, we have to read above. Let A be the 11 relative quality of Zuffa athletes, which Zuffa can 12 increase by incurring up cost according to the cost 13 function C of A. So that when A is bigger Zuffa 14 becomes -- that larger A makes those athletes more 15 effective revenue generators. 16 Q. What does it mean to say an athlete is a 17 more effective revenue generator? 18 A. That I've made some investments in the 19 person's, in the context of this case, notoriety, 20 reputation, the fighters he has fought against -- 21 or he or she has fought against in the past, have 22 done advertising, and so on that makes a unit of 23 labor from this individual more productive. 24 Q. So when Zuffa makes its fighters more 25 effective revenue generators, they're able to</p>	<p style="text-align: right;">25</p> <p>1 Q. And is it your opinion that one of the 2 things that Zuffa is particularly good at is 3 causing its fighters to be more effective revenue 4 generators? 5 A. I think that's Zuffa's position and I 6 think that's what the evidence tends to show, 7 yes. 8 Q. Is it your opinion? 9 A. I just said yes. 10 Q. Please turn to paragraph 56, please. It's 11 on page 23. Here in the last sentence of paragraph 12 56 you say that "UFC sponsor Anheuser-Busch 13 considers White to be an 'A-level athlete' for 14 purposes of its premium marketing campaigns." 15 Mr. White in this paragraph is Dana White; is that 16 right? 17 A. That's my understanding, yes. 18 Q. Okay. 19 And this paragraph is talking about UFC's 20 purchase in 2016 by a consortium of investors, 21 correct? 22 A. Yes. 23 Q. And that consortium of investors is WME; 24 is that right? 25 A. That's my recollection. The initials</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">26</p> <p>1 don't stick with me. So...</p> <p>2 Q. You can ask the person sitting over here.</p> <p>3 So with reference to the -- what does the</p> <p>4 term "A-level athlete" mean as it's used in that</p> <p>5 paragraph?</p> <p>6 A. It's just used in the quote. It's my</p> <p>7 understanding that that's what Anheuser-Busch</p> <p>8 considered Mr. White to be.</p> <p>9 Q. But extracting from what they considered</p> <p>10 Mr. White to be, I want to have an understanding of</p> <p>11 what you -- what you understand the term "A-level</p> <p>12 athlete" to be.</p> <p>13 A. I took it only to mean that they think</p> <p>14 Mr. White is important.</p> <p>15 Q. And they think he's as important to the</p> <p>16 UFC as one of the UFC's top fighters; is that what</p> <p>17 that's saying?</p> <p>18 A. All it says is that they think he's</p> <p>19 important and they wanted to retain him.</p> <p>20 Q. And they're comparing him to an A-level</p> <p>21 athlete, correct?</p> <p>22 A. Well, that's what the term says. I don't</p> <p>23 know if it's -- there could be a AA-level athlete</p> <p>24 or AAA-level athlete.</p> <p>25 Q. Well, presumably the person writing this</p>	<p style="text-align: right;">28</p> <p>1 Q. Turn to paragraph 113. I'd like you to</p> <p>2 turn to the sentence beginning with "The</p> <p>3 competitive value"; do you see that towards the</p> <p>4 middle of the paragraph?</p> <p>5 A. Yes.</p> <p>6 Q. It says "The competitive value of a</p> <p>7 successful athlete hinges on promotion that</p> <p>8 generates consumer awareness of the athlete</p> <p>9 contributing to what Dr. Singer refers to as an</p> <p>10 athlete's human capital. As explained above, if</p> <p>11 athletes can freely switch to competing promoters</p> <p>12 that pay 'competitive' compensation given the</p> <p>13 athlete's human capital" -- I think I'm reading to</p> <p>14 you the wrong part. I'll withdraw that for the</p> <p>15 moment. I apologize.</p> <p>16 A. Okay.</p> <p>17 Q. Okay. I'll go back to the part that I</p> <p>18 read. "The competitive value of a successful</p> <p>19 athlete hinges on promotion that generates consumer</p> <p>20 awareness of the athlete contributing to what</p> <p>21 Dr. Singer refers to as an athlete's human</p> <p>22 capital." Is it fair to say that promotion</p> <p>23 contributes to an athlete's human capital; do you</p> <p>24 agree with that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">27</p> <p>1 believed that there were grades of athletes that</p> <p>2 the UFC had, correct?</p> <p>3 A. Well, this says Anheuser-Busch considers</p> <p>4 White to be an A-level athlete.</p> <p>5 Q. Correct.</p> <p>6 A. Anheuser-Busch could be -- you know, they</p> <p>7 sponsor football games and all sorts of things.</p> <p>8 Q. Well, is it fair to say that one of the</p> <p>9 things that the WME purchased when it bought Zuffa</p> <p>10 for \$4 billion was athlete talent?</p> <p>11 A. You can't purchase athlete talent. What</p> <p>12 is it, the 15th amendment or something. You can</p> <p>13 only rent these people for a period of time. So --</p> <p>14 Q. I'm with you there.</p> <p>15 A. They -- they purchased a set of</p> <p>16 contractual rights and a business model and so</p> <p>17 on.</p> <p>18 Q. And one of the things that that was</p> <p>19 valuable to WME was that Zuffa had certain</p> <p>20 contractual rights with athlete talent, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And one of the reasons why athlete talent</p> <p>23 is valuable is because the athletes are capable of</p> <p>24 generating revenues for the organization, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">29</p> <p>1 Q. What is human capital?</p> <p>2 A. Human capital is the intangible set of</p> <p>3 skills and attributes that end up being embodied in</p> <p>4 an individual after investments or it could just be</p> <p>5 because of innate talent.</p> <p>6 Q. And is fair to say that, all things equal,</p> <p>7 the -- the more human capital an athlete has the</p> <p>8 more revenues he's capable of generating when he</p> <p>9 fights?</p> <p>10 A. Well, I mean --</p> <p>11 Q. Roughly.</p> <p>12 A. Roughly. You're saying that -- there are</p> <p>13 different types of human capital. There's a whole</p> <p>14 vector of skills that goes into this and some are</p> <p>15 probably more productive at generating -- my human</p> <p>16 capital wouldn't do much good in the octagon.</p> <p>17 Q. Fair enough, though it might be</p> <p>18 interesting.</p> <p>19 A. I assure you it wouldn't be.</p> <p>20 Q. But with respect to MMA fighters the more</p> <p>21 human cap- -- capital an MMA fighter has all things</p> <p>22 equal the more revenues he's capable of generating</p> <p>23 when he -- when he fights, right?</p> <p>24 A. If we define human capital, and we can, I</p> <p>25 think, as the ability to generate revenues then</p>

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<p style="text-align: right;">30</p> <p>1 you've stated sort of a tautology there.</p> <p>2 Q. Okay.</p> <p>3 Turn to paragraph 57 of your report,</p> <p>4 please.</p> <p>5 A. This comes to one of those -- I see the</p> <p>6 first sentence.</p> <p>7 Q. Yeah.</p> <p>8 A. There's probably a missing verb there, but</p> <p>9 go ahead.</p> <p>10 Q. I'm going to ask you about the second</p> <p>11 sentence where you write "These efforts by Zuffa</p> <p>12 and Zuffa's skill in providing consumers with an</p> <p>13 attractive MMA product grew the market for MMA to</p> <p>14 the benefit of athletes, consumers, and competing</p> <p>15 promoters"; do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. You opine here that Zuffa grew the market</p> <p>18 for MMA for the benefit of athletes, consumers, and</p> <p>19 committing -- competing promoters. Can you explain</p> <p>20 how --</p> <p>21 A. To, not for, but to. Sorry.</p> <p>22 Q. To the benefit, yes. Understood. Can you</p> <p>23 explain how Zuffa's efforts to grow the market for</p> <p>24 MMA benefited MMA athletes?</p> <p>25 A. Sure. Just take a simple example of the</p>	<p style="text-align: right;">32</p> <p>1 wouldn't change in equilibrium marginal revenue</p> <p>2 product.</p> <p>3 Q. But aggregate supply of MMA fighters is</p> <p>4 not completely elastic, correct?</p> <p>5 A. Yeah. I don't know -- I don't know that</p> <p>6 that's true in the long run actually. I don't</p> <p>7 think we have any evidence that is true in the long</p> <p>8 run.</p> <p>9 Q. In the short run the -- that's not true,</p> <p>10 correct?</p> <p>11 MR. ISAACSON: Objection to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. In the short run as in, you know, almost</p> <p>14 all industries short-run supply is less elastic</p> <p>15 than long-run supply.</p> <p>16 Q. Did you do any empirical analysis of the</p> <p>17 long-run elasticity of supply of MMA fighters in</p> <p>18 this case?</p> <p>19 A. Are you asking whether I estimated the</p> <p>20 long-run elasticity of supply?</p> <p>21 Q. Did you?</p> <p>22 A. I didn't -- I didn't estimate the long-run</p> <p>23 elasticity of supply.</p> <p>24 Q. Did you do any other empirical analysis of</p> <p>25 the long-run elasticity of supply of MMA</p>
<p style="text-align: right;">31</p> <p>1 television program they created back in, what was</p> <p>2 it, 2005 that generated interest in MMA among the</p> <p>3 public. That raised the demand for the services of</p> <p>4 people who can perform in the octagon, let's say,</p> <p>5 that benefited the athletes that fight for Zuffa</p> <p>6 and other athletes as well.</p> <p>7 Q. Did that promotional effort in creating</p> <p>8 the show increase the marginal revenue product of</p> <p>9 MMA fighters generally?</p> <p>10 A. You mean -- when you say generally, you</p> <p>11 mean like at other --</p> <p>12 Q. Yes.</p> <p>13 A. For other promoters and everything, yes.</p> <p>14 Q. So it increased the marginal revenue</p> <p>15 product of fighters at the UFC and increased the</p> <p>16 marginal revenue product of other professional MMA</p> <p>17 fighters, whether or not they fought at the UFC,</p> <p>18 correct?</p> <p>19 A. I would not expect it to be by similar</p> <p>20 amounts or by similar proportional amounts, but so</p> <p>21 long as it increased interest in the sport</p> <p>22 generally it would have some impact on attendance</p> <p>23 and willingness to pay for stuff associated with</p> <p>24 MMA events promoted by others. Now, if -- if</p> <p>25 aggregate supply was completely elastic, then it</p>	<p style="text-align: right;">33</p> <p>1 fighters?</p> <p>2 A. Well, we know that there are more MMA</p> <p>3 fighters and more MMA events as demand has ground.</p> <p>4 So there's been entry from other sports and young</p> <p>5 people at the front end. So there's some evidence</p> <p>6 of, yes, longer -- longer run higher elasticity of</p> <p>7 supply.</p> <p>8 Q. Is one of the reasons why there has been</p> <p>9 entry by MMA athletes into the sport of MMA because</p> <p>10 the compensation of MMA athletes has gone up over</p> <p>11 time?</p> <p>12 A. That's one reason, but if supply was</p> <p>13 really highly elastic you'd get entry without --</p> <p>14 you'd get transitory increases in compensation, but</p> <p>15 equilibrium compensation wouldn't change.</p> <p>16 Q. But you do agree that one of the things</p> <p>17 causing athletes to go into MMA instead of, say,</p> <p>18 football over time is that the compensation of MMA</p> <p>19 athletes has gone up, correct?</p> <p>20 A. I would say that the compensation of MMA</p> <p>21 athletes has gone up.</p> <p>22 Q. And that has --</p> <p>23 A. But whether in the long run that's going</p> <p>24 to raise MMA compensation in equilibrium remains to</p> <p>25 be seen because entry -- it's just like wheat</p>

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<p>34</p> <p>1 farmers. If the surgeon general came on and said 2 eating wheat reduces heart disease and everybody 3 starts eating wheat, then there's a transitory 4 increase in the price of wheat as you move out 5 along a short-run supply curve, but more people 6 start producing wheat and if there's constant 7 returns at the industry level, the price of wheat 8 is going to return to what it was before.</p> <p>9 Q. Are MMA athletes like wheat farmers?</p> <p>10 A. No. They perform different functions than 11 wheat farmers.</p> <p>12 Q. Are MMA athletes commodities?</p> <p>13 A. Well, it's not --</p> <p>14 MR. ISAACSON: Objection to form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. -- it's not that they're commodities, no. 17 That's not the right term. The -- the question is, 18 you know, what's the abundance of the talents that 19 they have relative to the demand for them.</p> <p>20 Q. Turn to paragraph 63 of your report, 21 please. The last sentence of that paragraph on 22 page 26 says "Zuffa's success at identifying MMA 23 athletes early on in their careers and promoting 24 them successfully into household names has been a 25 Cornerstone of its long-term value and success"; do</p>	<p>36</p> <p>1 lawyers in the long run. You're still going to 2 have good lawyers and not-so-good lawyers and the 3 good lawyers will make more than the not-so-good 4 lawyers, but the whole distribution of earnings 5 doesn't necessarily have to change in the long 6 run.</p> <p>7 Q. How does promoting fighters into household 8 names allow Zuffa to have long-term value and 9 success?</p> <p>10 A. Because that's the type of thing that, as 11 I understand it, in this marketplace people are 12 willing to pay for.</p> <p>13 Q. A key advantage of having fighters who are 14 household names is that more people know about 15 those fighters and want to pay to watch them, 16 right?</p> <p>17 A. I think that's a fair statement.</p> <p>18 Q. So due to the UFC's promotional efforts, 19 in your view, the UFC fighters can attract a wider 20 audience when they fight; is that right?</p> <p>21 A. To the extent that those -- for the 22 fighters that are successful subjects of such 23 investment, that is true.</p> <p>24 Q. What you're saying is that one of the ways 25 in which Zuffa has become successful is by boosting</p>
<p>35</p> <p>1 you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. So in your opinion what has made Zuffa a 4 long-term value and success is that Zuffa has been 5 able to both identify MMA athletes early in their 6 careers and promote them successfully into 7 household names; is that right?</p> <p>8 A. That's part of what Zuffa does.</p> <p>9 Q. And that's one of the things that has made 10 Zuffa a long-term value and success, correct?</p> <p>11 A. I think we referred to two things there. 12 Identify them and then promote them successfully. 13 Identify their talent --</p> <p>14 Q. Okay.</p> <p>15 A. -- so their -- their potential to be 16 promoted, and then promoting them.</p> <p>17 Q. If all MMA athletes are the same, why 18 would it be important to identify talent?</p> <p>19 A. But I didn't say they were all the same. 20 You know, you could have an industry where 21 different athletes have different amounts of talent 22 and then the more talented ones will earn more, but 23 the supply of more talented guys is highly elastic 24 and the supply of less talented guys is highly 25 elastic. It's like if you doubled the demand for</p>	<p>37</p> <p>1 the ability of its fighters to generate revenues 2 when they fight, correct?</p> <p>3 A. Yeah. The point of investing is to 4 generate revenues.</p> <p>5 Q. And the investments you're talking about 6 here have boosted the ability of their product, the 7 fighters, to generate revenues when they fight, 8 correct?</p> <p>9 A. Well, the fighters, the other inputs used 10 by Zuffa all go into the act of generating 11 revenues. And so they've made a number of 12 successful investments and those tend to generate 13 revenues.</p> <p>14 Q. And one of those successful investments, 15 in your view, is the investments they make in 16 identifying and promoting fighters which has become 17 successful by boosting the ability of those 18 fighters to generate revenues when they fight, 19 correct?</p> <p>20 A. As I alluded to a minute ago I don't want 21 to convey the impression that it's every fighter, 22 but they make some successful investments and those 23 fighters generate revenues.</p> <p>24 Q. Would you agree that a fighter who's a 25 household name because of Zuffa's investments and</p>

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<p style="text-align: right;">38</p> <p>1 promoting that fighter all things equal would 2 generate more revenues for the UFC when he fights 3 than a fighter who is not a household name? 4 A. Well, you know, you could -- one can 5 become a household name for a lot of reasons. If 6 we assume that what you mean by a household name is 7 that he or she is well known and that people value 8 that notoriety, then yes. 9 Q. Turn to paragraph 258 of your report, 10 please. At the bottom of page 111 you say 11 "Further, MMA athletes benefit from the greater 12 exposure they receive on television broadcasts"; do 13 you see that? 14 A. Yes, I do. 15 Q. Explain the reasoning here. How do MMA 16 athletes benefit from the greater exposure they 17 receive on television broadcasts? 18 A. Because that increases their -- the 19 knowledge of the public about that athlete, it 20 increases the interest of the public so that that 21 benefits the -- the athlete both in terms of any 22 revenues they might collect from that and future 23 television broadcasts either for one promoter or 24 for another. 25 Q. The more well known an athlete is, all</p>	<p style="text-align: right;">40</p> <p>1 A. Well, we have to be careful. To the 2 extent that -- highly compensated fighters generate 3 more revenue than -- which way the causation goes 4 there is -- is not crystal clear, right? I've got 5 a good fighter -- I'm a good fighter, I'm already 6 well known, I'm prominent, then I'm going to 7 generate more revenue, but it is also the case 8 simply from the structure of compensation that I 9 think certain fighters get paid more and then it 10 increases the demand for you in the future. 11 Q. Would you agree that the average WNBA game 12 generates less revenue than the average NBA game? 13 A. I believe that's true. And if you're 14 representing it to be true, I'll stipulate that it 15 is. 16 Q. And that's because there's a larger pool 17 of potential people willing to pay to see the NBA 18 events than WNBA events, correct? 19 A. I think that -- I think that's a fair 20 statement. 21 Q. And the people that are -- the larger pool 22 of people that are willing to see -- 23 A. Or it could be the same pool of people who 24 are willing to pay more. 25 Q. Okay. Well --</p>
<p style="text-align: right;">39</p> <p>1 things equal, the more revenues that athlete will 2 generate when he or she fights, right? 3 A. This comes back to what I said. It 4 depends on whether that notoriety is positive or 5 negative, but if -- if by def- -- we're back to a 6 tautology. If what you say is that positive 7 notoriety creates greater public interest and 8 people are willing to pay for that, then that 9 benefits the fighter. 10 Q. And it benefits the fighter because if a 11 fighter generates more revenues when he or she 12 fights, that fighters' compensation will be higher, 13 all things equal, correct? 14 A. It depends on -- it depends on market 15 conditions, but to the extent that -- as it does in 16 this market, that increases the market's 17 willingness to pay for that individual, then that 18 benefits the fighter. 19 Q. You, in fact, found in this case that 20 there's a statistically significant relationship 21 between event revenues and fighter compensation, 22 correct? 23 A. Yes. 24 Q. As event revenues go up, all things equal, 25 fighter compensation goes up, correct?</p>	<p style="text-align: right;">41</p> <p>1 A. Yeah. 2 Q. -- either -- either it's the same pool of 3 people willing to pay more or there's a larger pool 4 of people that want to see NBA versus WNBA, 5 correct? 6 A. I think that's a fair statement. 7 Q. And it's also fair to say that you would 8 expect NBA players on average to generate more 9 revenues when they play than WNBA players, correct? 10 A. You said on average. I think you said on 11 average. 12 Q. Yes. 13 A. So it's not true for every athlete. I 14 believe that's -- I think I see where you're going. 15 I think it's right. 16 Q. And it would be reasonable to conclude 17 that the average marginal revenue product of an NBA 18 player is greater than the average marginal revenue 19 product of a WNBA player, correct? 20 A. I congratulate you for getting average and 21 marginal in the same sentence, but the marginal 22 revenue product of a typical NBA player properly 23 defined is probably bigger than the average 24 marginal revenue product of a typical WNBA 25 player.</p>

11 (Pages 38 to 41)

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<p style="text-align: right;">42</p> <p>1 Q. And in computing or determining the 2 marginal revenue product of either an NBA player or 3 a WNBA player, does it matter to you how the NBA 4 came to have a larger market than the WNBA? 5 MR. ISAACSON: Objection to form. 6 BY THE WITNESS: 7 A. For the -- could you read the beginning of 8 the sentence? 9 Q. Yes. In computing the marginal revenue 10 product or in determining the marginal revenue 11 product of an NBA player versus a WNBA player, does 12 it matter to you as an economist how it was that 13 the WNBA [sic] came to have a larger market than 14 the WNBA does? 15 A. I mean, for simply the purpose of you're 16 assuming that he could compute this. 17 MR. ISAACSON: You said WNBA having a 18 larger market than WNBA, which I don't think you 19 want. 20 MR. CRAMER: Correct. I'll stand 21 corrected. I'll ask it again. 22 BY MR. CRAMER: 23 Q. For the simple purpose of just determining 24 the marginal revenue product of an NBA player and a 25 WNBA player, does it matter to you how the NBA came</p>	<p style="text-align: right;">44</p> <p>1 A. If what you're asking is did I compute the 2 addition to revenues that would come from adding a 3 marginal fighter to the stock of fighters holding 4 constant everything else about the organization, 5 no, no one's done that in this case. 6 Q. Is it fair to say that the marginal 7 revenue product of MMA fighters as a whole is 8 roughly equivalent to the degree to which they 9 contribute to MMA event revenues? 10 MR. ISAACSON: Objection to form. 11 BY THE WITNESS: 12 A. I don't know what you mean by "as a 13 whole." 14 Q. Is it fair to say that the marginal 15 revenue product of MMA athletes or a MMA fighter, 16 put it that way -- 17 A. Let's do a MMA fighter. 18 Q. Okay. All right. Is it fair to say that 19 the marginal revenue product of a MMA fighter is 20 roughly equivalent to the degree to which he or she 21 contributes to event revenues? 22 A. Well, I mean -- 23 MR. ISAACSON: Objection to form. 24 BY THE WITNESS: 25 A. -- there's all sorts of revenue sources.</p>
<p style="text-align: right;">43</p> <p>1 to have a larger market than the WNBA? 2 MR. ISAACSON: Objection to form. 3 MR. CRAMER: You can answer. 4 A. Well, it can, but you've asked it in the 5 sense of if you were simply -- assuming I could do 6 this computation because marginal revenue product 7 is a concept, it's not something that I've -- 8 you've just got a spreadsheet, you can press a 9 button and get it. In certain context it would 10 matter, depends on what you're analyzing, and in 11 certain context it wouldn't. But if all you wanted 12 to know is what's the marginal revenue product of 13 LeBron James if -- when he's added to the roster 14 of -- I'll change teams -- Oklahoma City, then as 15 opposed to -- and I can't remember the names of any 16 WNBA athletes and maybe that's your point -- when I 17 move one of those players from one franchise to 18 another what's the marginal revenue product, 19 conceptually I don't need to know what caused it. 20 But then it has different -- what caused it has 21 different implications for the form of contracts 22 and all sorts of things. 23 Q. It's fair to say that in this case you 24 made no effort to compute the marginal revenue 25 product of any MMA fighters, correct?</p>	<p style="text-align: right;">45</p> <p>1 The way I described it a minute ago -- and I'm 2 going to prefer my definition to yours -- is that 3 the marginal revenue product of an individual is 4 the addition to the organization's revenues from 5 all sources when that individual is added to the 6 labor force of the organization holding constant 7 everything else that the organization does to 8 generate revenue. 9 Q. And you made no effort in this case to 10 compute again the marginal revenue product of any 11 MMA athlete, correct? 12 MR. ISAACSON: Asked and answered. 13 BY THE WITNESS: 14 A. I don't think anybody in this case has -- 15 has done that. The marginal revenue product is a 16 concept. 17 Q. Have you made an effort to estimate in any 18 way the marginal revenue product of MMA fighters in 19 your work in this case? 20 A. As a -- as a measure of what they add to 21 revenues, no one's done that, but to the extent -- 22 if the market was competitive, then the marginal 23 revenue product would be equal to what they get 24 paid. 25 Q. So --</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">46</p> <p>1 A. It comes back to a sentence you asked me 2 about -- about 45 minutes ago. So I'm just 3 restating the obvious. 4 Q. So if the market's competitive, the 5 athlete will get paid equal to his marginal revenue 6 product; and if there's monopsony power in the 7 market, the athlete will get paid below his 8 marginal revenue product, correct? 9 A. Yeah. All athletes, not just Zuffa 10 athletes. 11 Q. And are you assuming for your work in this 12 case that the MMA market is competitive? 13 A. I don't know whether it's perfectly 14 competitive, but it's -- it's highly competitive. 15 Q. Is that an assumption of yours or a 16 finding of yours? 17 A. It's a finding because other people are 18 competing for athletes and Zuffa has to compete for 19 athletes. 20 MR. CRAMER: The court reporter would like 21 us to take a break and she's in charge. 22 THE VIDEOGRAPHER: Going off the record at 23 10:31. 24 (A short break was had.) 25 THE VIDEOGRAPHER: We are going back on</p>	<p style="text-align: right;">48</p> <p>1 increased the amount of revenues generated by UFC 2 fighters at each Zuffa event, right? 3 A. It -- it increased the revenue that 4 generated by fighters. 5 MR. ISAACSON: Object to form. 6 BY THE WITNESS: 7 A. It's too vague. 8 Q. Okay. I will -- I will restate the 9 question. The growth in revenues that flowed in 10 part from the growth in viewership during this 11 period also was a reflection of the increased 12 marginal revenue product of UFC fighters, 13 correct? 14 MR. ISAACSON: Objection to form. 15 BY THE WITNESS: 16 A. I think I understand what you're saying. 17 I'm going to agree with it, but I'm not quite sure 18 what you're saying, but go ahead. 19 Q. Okay. I don't want -- I don't want you 20 not to be sure. I don't think Mr. Isaacson wants 21 you not to be sure either. So let me ask it a 22 different way. Is it fair to say that the 23 increased fighter marginal revenue product would be 24 correlated with the growth in UFC event revenues 25 over this period?</p>
<p style="text-align: right;">47</p> <p>1 the record at 10:43. This begins disk No. 2. 2 BY MR. CRAMER: 3 Q. The court reporter has told me that we 4 have a tendency to talk over each other. So let's 5 really both do our best to try and stop doing that. 6 I will try to do my part. 7 All right. Turn to paragraph 32, please. 8 The bottom of page 12, the last sentence begins 9 "Overall attendance at MMA events immediately 10 before and during the class period were broadly 11 consistent while television viewership of MMA 12 events increased from 27 million viewers in 2009 to 13 60 million viewers in 2016"; do you see that? 14 A. Yes. 15 Q. So from 2009 to 2016 the number of viewers 16 watching television broadcasts of MMA has more than 17 doubled; is that right? 18 A. That's what it says. That's an 19 implication of what it says. 20 Q. Okay. And you would agree that the growth 21 in viewership has increased the amount of revenue 22 that Zuffa generates from the average UFC event, 23 correct? 24 A. Yes. 25 Q. And this growth in revenues has also</p>	<p style="text-align: right;">49</p> <p>1 MR. ISAACSON: Objection to form. 2 BY THE WITNESS: 3 A. Well, not necessarily. It depends on 4 what -- to what the increase in event revenues is 5 attributable. 6 Q. Is it your opinion that fighter marginal 7 revenue product at the UFC did not increase from 8 2009 to 2016? 9 A. No, that's not what I said. 10 Q. So you do -- 11 A. But the mere fact -- sorry if we talked 12 over each other, but I think I'm completing a 13 thought. The mere fact that more people watched 14 doesn't mean that the marginal revenue product of 15 any particular input has -- has increased. 16 Q. If we assume for purposes of this question 17 that the marginal revenue product of fighters has 18 indeed increased from 2009 -- strike that. 19 Turn to paragraph 126, please. At the 20 beginning of paragraph 126 you say "To state the 21 obvious, an athlete's pay as a share of event 22 revenue can easily decline even if pay measured as 23 it should be in dollars per athlete is increasing. 24 This is especially likely if Zuffa's promotional 25 investments drive greater interest in its MMA</p>

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<p>50</p> <p>1 events so that Zuffa's revenues at each event 2 increased because the greater attendance -- because 3 of great attendance or viewership"; do you see 4 that? 5 A. Yes. 6 Q. So would you agree that in general the 7 share of UFC event revenues going to fighters did, 8 in fact, decline over time, say, from 2009 to 2016 9 even as fighter compensation measured in dollars 10 per fight increased? 11 A. I'm not sure it declined in every year, 12 but I think that -- I think the evidence is that 13 fighter compensation increased at a different rate, 14 a slightly lower rate -- or somewhat lower rate 15 than the increase in revenues so that the ratio 16 would be lower. 17 Q. So what is happening over time, in your 18 view, is that the UFC event revenue pie is 19 increasing while the UFC's share of event revenues 20 relative to the fighter's collective share is 21 increasing; is that fair? 22 MR. ISAACSON: Objection to form. 23 BY THE WITNESS: 24 A. Well, I don't know that. You're defining 25 a pie. The ratio of fighter compensation to total</p>	<p>52</p> <p>1 Q. Is it your opinion that Zuffa's 2 promotional investments drive greater interest in 3 MMA events that that explanation is what's causing 4 fighter compensation to grow more slowly than event 5 revenues? 6 A. Well, that combined with the market 7 structure, yes. 8 Q. And what is that opinion -- putting the 9 market structure part aside for the moment, what is 10 that opinion based upon? 11 A. Well, I look at the -- these sort of 12 poster child for Zuffa investment is the ultimate 13 fighter television program that generated so much 14 interest and that grew interest in the -- in the 15 event, but advertising, choosing the right com- -- 16 finding the right athletes, choosing the right 17 combinations of athletes to compete against each 18 other, designing the sequence of fights that a 19 fighter's going to be in, those are all activities 20 that Zuffa engages in to -- as part of its business 21 model. 22 Q. Which one of those activities you just 23 described would enhance event revenues without also 24 enhancing fighter marginal revenue product, if any? 25 A. Well, any one of them actually could do</p>
<p>51</p> <p>1 event revenue in which they fight was on average 2 lower as those revenues increased. 3 Q. Okay. That's fair. In other words, the 4 UFC as a business is keeping a larger share of 5 event revenues for itself over time as event 6 revenues increase; is that fair? 7 MR. ISAACSON: Objection to form. 8 BY THE WITNESS: 9 A. No. 10 Q. In other words, the UFC is paying -- I'll 11 strike that. 12 And, in your view, the fact that UFC 13 fighter compensation is growing slower than UFC's 14 event revenues can be explained because Zuffa's 15 promotional investments drive greater interests in 16 MMA events? 17 A. That would happen if the last part of your 18 sentence is true. 19 Q. So one explanation, in your view -- one 20 possible explanation, in your view, for the fact 21 that growth in event revenues is outstripping 22 growth in fighter compensation is that Zuffa's 23 promotional investments drive greater interest in 24 MMA events; is that right? 25 A. That could make it happen, yes.</p>	<p>53</p> <p>1 that because the definition of marginal revenue 2 product is what this individual added to the stock 3 adds to my revenues holding everything else 4 constant. And so the television program could have 5 increased the event revenues without for any 6 particular fighter changing that fighter's marginal 7 revenue product, because the marginal revenue 8 product does not identify the particular event. I 9 mean, the firm's making a calculation of how much 10 it's going to sell and at what prices over time and 11 what all other investments it's going to make. And 12 so marginal revenue product is far removed from 13 simply the event revenue which a fight -- fighter 14 is fighting. 15 Q. Where in your report, if anywhere, do you 16 provide an analysis of those portions of Zuffa's 17 investments that do not contribute to fighter 18 marginal revenue product? 19 A. Are you -- I'm confused as to what you're 20 asking. Are you saying that certain inputs to the 21 process of producing Zuffa's product are 22 complementary with -- with the talents of athletes 23 so that if I advertise that raises the productivity 24 of an athlete, it's sort of what in technical 25 jargon it would be Q complements or something?</p>

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<p style="text-align: right;">54</p> <p>1 They're all com- -- they can all be complementary 2 if that's what you're asking, but I don't know. 3 Q. So all of the investments that you have 4 discussed that have generated additional revenues 5 for Zuffa over time, event revenues for Zuffa over 6 time could well be complements to fighter talent, 7 correct? 8 A. Any of the inputs used could be 9 complements to fighter talent. 10 Q. And if those inputs used are complements 11 to fighter talent, then adding those inputs would 12 increase the marginal revenue product of the 13 fighter, all things equal, correct? 14 A. Well, holding constant all the other 15 things that happen, it can shift marginal product. 16 Whether in equilibrium it changes marginal revenue 17 product at the quantity that's actually employed is 18 another question. 19 Q. You do not in your report evaluate whether 20 any of the inputs that Zuffa has invested in over 21 time are complements to fighter talent or are not 22 complements to fighter talent, correct? 23 A. Well, since the event revenues that are 24 being generated are higher and some of that's 25 attributable to the investments that Zuffa has</p>	<p style="text-align: right;">56</p> <p>1 that appendix example was a complementarity [sic] 2 between the investments made by Zuffa and the 3 effective amount of entertainment that's being 4 provided by a Zuffa athlete. 5 Q. The example from the appendix was one in 6 which Zuffa's investments made its fighters better 7 at generating revenue when they fight, correct? 8 A. Yes. 9 Q. So that's an example of Zuffa's 10 investments enhancing the marginal revenue product 11 of its fighters, correct? 12 A. Yes. Enhancing the product of its 13 fighters. 14 Q. Do you have any examples of Zuffa's 15 investments that add to event revenues without 16 enhancing the revenue-generating power of their 17 fighters in your report? 18 Well, let's be careful about what I just 19 said. In the appendix what happens is that the 20 number of units of entertainment or interest 21 generated by an athlete is increased by the 22 investments that Zuffa makes. Whereas in that 23 example the price per unit of interest was given 24 and the -- the point of that example was even if 25 there was no market power downstream in the output</p>
<p style="text-align: right;">55</p> <p>1 made, that shifted the demand for talent and even 2 in a perfectly competitive labor market that would 3 raise compensation. So in that sense we've -- 4 we've analyzed that complementarity. 5 Q. So to the extent you've analyzed the 6 complementarity -- 7 A. And let me -- I'm sorry to speak over you, 8 but let me just finish the thought. You know, with 9 rising supply price at the industry label in a 10 perfectly competitive labor market it would 11 increase compensation. 12 Q. To the extent you've analyzed in your 13 report whether Zuffa's inputs to the growth in 14 event revenues over time are or are not complements 15 to athlete talent, you have shown that the inputs 16 are indeed complements to athlete talent, correct? 17 A. Complements in the sense of producing -- 18 you've got to define the units of output by which 19 then you're multiplying by marginal revenue to get 20 marginal revenue product, and the -- it can be 21 raising marginal revenue product by raising the 22 marginal revenue product -- marginal revenue 23 product, or it can be making them as I did in that 24 example you showed them in the appendix -- you 25 showed in the appendix making each individual. So</p>	<p style="text-align: right;">57</p> <p>1 market or upstream in the input market, you'd get 2 the kind of pattern that we're talking about. So 3 that's What I mean by Q complementarity, those 4 inputs raise the productivity of -- of an athlete. 5 It didn't necessarily change marginal revenue. 6 You're dancing around one with a -- a related 7 concept which is that the investments increase the 8 market's willingness to pay for the athlete for any 9 given amount of talent that the athlete has. 10 Zuffa's doing many complicated things that affect 11 both of those. 12 Q. Where in your report do you evaluate that 13 latter concept? 14 MR. ISAACSON: Objection to form. 15 MR. CRAMER: By "latter concept" I mean 16 investments that increase the willingness to pay 17 for the athlete given the talent and revenue 18 generating power of that athlete. 19 A. Well, I provide examples. The television 20 show did that, increased willingness to pay for 21 what those athletes bring to the party. Now, you 22 can view that as -- it's -- it's -- we're getting 23 down into the nuances of the models, that you can 24 view that as increase in the amount of 25 entertainment that they provide and entertainment</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">58</p> <p>1 has a -- units of entertainment have a fixed price, 2 or you can say it increases the price per unit of 3 entertainment to -- it's -- I mean, you could model 4 it either way or you could re-think about it either 5 way. 6 Q. Did you model it one way or the other? 7 A. Well, in the back I did it for the 8 purposes of that example as it increased the number 9 of units of entertainment. You know, in the 10 report, you know, I think it would be easier to 11 think about it in terms of -- of -- like the 12 television show is increasing people's willingness 13 to pay to see athletes with a given amount of 14 talent. 15 Q. Let's switch topics slightly. Is it fair 16 to say that if all you knew about a firm was that 17 worker compensation increased over time that you 18 could not determine as an economist that the firm 19 was or was not exercising monopsony power? 20 A. You would need to know more. 21 Q. What more would you need to know? 22 A. I can't infer that -- a firm with 23 monopsony power, I mean, you view -- I think you've 24 alluded to this in questions over an hour ago. If 25 demand increase can move out along the average</p>	<p style="text-align: right;">60</p> <p>1 labor market go up -- goes up about 50 percent, but 2 the wages only go up about 10 percent. Could you 3 conclude from that that monopoly power -- monopsony 4 the power is being exercised over that period? 5 MR. ISAACSON: Objection to form. 6 BY THE WITNESS: 7 A. No. 8 Q. What more would you need to know? 9 A. Well, the outcome that you've described is 10 consistent with a competitive labor market. I 11 think you started by saying assume a perfectly 12 competitive labor market and then you switched in 13 the middle to the exercise of monopsony power, 14 which is -- 15 Q. Fair enough. 16 A. -- a total contradiction. So we can't -- 17 but the facts you describe are consistent with the 18 operation of a competitive labor market. 19 Q. So let me reask the question. Assume the 20 market is perfectly competitive at time T. Then 21 over some period of time you determine that the 22 marginal revenue product of the firm's workers goes 23 up about 50 percent and you also determine that the 24 wages only go up about 10 percent. Could you based 25 on those facts determine that monopsony power is</p>
<p style="text-align: right;">59</p> <p>1 factor cost curve and end up paying a higher 2 price. 3 Q. So one thing you would need to know is 4 whether or not demand had increased over time where 5 you saw worker compensation going up; is that fair? 6 A. No. That wouldn't provide the evidence of 7 monopsony power. 8 Q. What would you need to know in order to 9 know -- if you saw a firm whose worker compensation 10 was increasing over time, what would you need to 11 know in order to determine that that firm was 12 exercising monopsony power? 13 A. You'd need to know relative to some 14 but-for world that compensation would have been 15 even higher. So you'd need some kind of controlled 16 experiment about how a firm in similar 17 circumstances employed people and paid people or 18 maybe in some market in identifiably similar 19 circumstances where arguably the existence of that 20 market power you refer to did not exist or existed 21 at some lower level. 22 Q. Assume for this question that the market 23 is perfectly competitive. Over some period of time 24 you then determine that the marginal revenue 25 product of that firm's workers in a hypothetical</p>	<p style="text-align: right;">61</p> <p>1 being exercised? 2 A. Absolutely not. 3 Q. Why not? 4 A. Well, your premise was that the market was 5 perfectly competitive. In fact, this is -- this is 6 what the example in the appendix does. The 7 marginal revenue product of some firm increases. 8 Let's define perfectly competitive here as, you 9 know, perfectly elastic supply at the industry 10 level. Then wages aren't going to change. The 11 revenues of the firm that got this technological 12 advance that raised its demand for labor are going 13 to be higher. So the wage I pay each person didn't 14 change and revenues went up. That would happen in 15 perfect competition. 16 Q. Right. So in the example you just gave 17 the increased revenues resulted from some 18 technological advance? 19 A. Some investments, some -- something that 20 raised the marginal revenue product of labor in 21 this firm. They hired Dana White, hey, and he's a 22 like a tech -- he's a walking, talking 23 technological advance. I don't know. So he makes 24 demand for the output of this firm or the 25 productivity of the fighters, whatever, goes up.</p>

16 (Pages 58 to 61)

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<p style="text-align: right;">70</p> <p>1 is. I haven't studied it.</p> <p>2 Q. So your opinion is is that Zuffa has some</p> <p>3 degree of monopsony power but that degree is small;</p> <p>4 is that fair?</p> <p>5 A. If they have a degree of monopsony power,</p> <p>6 there's been no evidence to indicate what it is or</p> <p>7 that they've -- the evidence does not indicate that</p> <p>8 they've exercised monopsony power in this market.</p> <p>9 Whether they have some monopsony power or not is --</p> <p>10 is another question. If they tried to hire a whole</p> <p>11 bunch more athletes would they have to pay a higher</p> <p>12 wage? Maybe.</p> <p>13 MR. CRAMER: I'm marking as Topel</p> <p>14 Exhibit 3 the next document. Oh, excuse me.</p> <p>15 THE WITNESS: Same guys.</p> <p>16 MR. CRAMER: Oh, yes, same guys.</p> <p>17 (Topel Exhibit 3 marked as</p> <p>18 requested.)</p> <p>19 BY MR. CRAMER:</p> <p>20 Q. So what you've been handed is Topel</p> <p>21 Exhibit 3. It's a different chapter from the</p> <p>22 Ehrenberg and Smith textbook that you cite in</p> <p>23 footnote 205; is that right?</p> <p>24 A. Is this the same footnote? Sorry. I</p> <p>25 don't need to turn --</p>	<p style="text-align: right;">72</p> <p>1 Q. Do you agree with that?</p> <p>2 A. Well, it depends on a lot of things that</p> <p>3 go on above that paragraph. I think I know what</p> <p>4 they have in mind. So if there are --</p> <p>5 Q. Well -- go ahead.</p> <p>6 A. If there are -- just the mere existence of</p> <p>7 mobility costs doesn't do it because -- I mean, if</p> <p>8 there were constant mobility costs then -- then</p> <p>9 there's kind of a wedge between here and there, so</p> <p>10 to speak, but if what they mean is rising mobility</p> <p>11 costs so that the more people I try to hire from</p> <p>12 elsewhere the marginal person has to incur greater</p> <p>13 mobility costs to get from there to me, me as</p> <p>14 hiring somebody, then that, at least in the short</p> <p>15 run, can -- would be sort of the -- the level of</p> <p>16 compensation that I have to pay at the margin to</p> <p>17 attract people.</p> <p>18 Q. So am I right that decreasing worker</p> <p>19 mobility, making worker mobility more difficult all</p> <p>20 things equal makes the labor supply curve steeper?</p> <p>21 A. Decreasing labor mobility.</p> <p>22 MR. ISAACSON: Objection to form.</p> <p>23 BY MR. CRAMER:</p> <p>24 Q. Doing something to make it more difficult</p> <p>25 for one worker to move from one firm to another,</p>
<p style="text-align: right;">71</p> <p>1 Q. Yes.</p> <p>2 A. Okay. Go ahead.</p> <p>3 Q. And this is chapter 5 of the Ehrenberg</p> <p>4 text "Modern Labor Economics" and the chapter's</p> <p>5 entitled "Frictions in the Labor Market"; do you</p> <p>6 see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Please turn to -- before I ask you</p> <p>9 to turn -- I'm sorry. Turn to page 131. All</p> <p>10 right. I'd like you to look at the second full</p> <p>11 paragraph, first sentence on page 131 beginning</p> <p>12 with "Thus"; do you see that? It says --</p> <p>13 A. Oh, we're above the monopsonistic page.</p> <p>14 Okay.</p> <p>15 Q. Correct.</p> <p>16 A. "Thus the higher worker's mobility."</p> <p>17 Q. Yes.</p> <p>18 A. Okay.</p> <p>19 Q. I'll read it to you. It says "Thus, the</p> <p>20 higher worker's mobility costs are the steeper the</p> <p>21 labor supply curve facing a firm will tend to be.</p> <p>22 Conversely as mobility costs fall other things</p> <p>23 equal, the labor supply curve to firms will flatten</p> <p>24 and become more elastic"; do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">73</p> <p>1 raising the costs of a worker moving from one firm</p> <p>2 to another, that's what I mean.</p> <p>3 A. Then it just raises the cost of a</p> <p>4 worker --</p> <p>5 MR. ISAACSON: Objection to form.</p> <p>6 THE WITNESS: Tina's getting frustrated</p> <p>7 because we're all talking at once. So let's let</p> <p>8 her catch up. Are you caught up? Okay.</p> <p>9 BY THE WITNESS:</p> <p>10 A. This sentence here refers to mobility</p> <p>11 costs and it could be the mobility costs of going</p> <p>12 from A to B or from B to A; and if it's from B to A</p> <p>13 and I'm A, then I have to compensate people at the</p> <p>14 margin for that mobility cost to get them to come</p> <p>15 work for me. So I have to pay a higher wage than</p> <p>16 if that wasn't there. And if we're talking about</p> <p>17 going from B to A, then I can pay less than what</p> <p>18 the other guys pay because the worker has to take</p> <p>19 into account the mobility costs of going from A to</p> <p>20 B.</p> <p>21 Q. So if firm A raises the costs somehow of</p> <p>22 moving from firm A to firm B, firm A can pay the</p> <p>23 worker less than if he hadn't raised the cost of</p> <p>24 mobility, right?</p> <p>25 MR. ISAACSON: Objection to form.</p>

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<p>74</p> <p>1 BY THE WITNESS:</p> <p>2 A. Can pay the worker less than firm B.</p> <p>3 That's not what we see in this case, but that's</p> <p>4 true.</p> <p>5 Q. By "this case" you mean the Zuffa case?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let's still talk about the -- about</p> <p>8 the hypothetical. It's fair to say that, all</p> <p>9 things equal, if a firm is able to make it more</p> <p>10 difficult and expensive for its workers to move</p> <p>11 from its firm to another firm, the lower it is able</p> <p>12 to pay its workers; is that right?</p> <p>13 A. No.</p> <p>14 Q. Why is that wrong?</p> <p>15 A. Well, the -- I mean, we're -- you're</p> <p>16 sneaking up on the rules and -- and contract stuff,</p> <p>17 and to the extent that those rules make investments</p> <p>18 more valuable and allow the firm in question to</p> <p>19 collect on the returns on its investment, those</p> <p>20 rules can and generally will increase the amount</p> <p>21 that workers pay. I mean, if there were zero</p> <p>22 mobility costs ex post and no restrictions on</p> <p>23 going, then I -- I as firm A, I'm not investing in</p> <p>24 these people because it raises their general</p> <p>25 productivity. It's like I don't want to train -- I</p>	<p>76</p> <p>1 new entrants could expropriate existing Zuffa</p> <p>2 investments in athletes"; do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Could you explain the mechanism by which</p> <p>5 eliminating challenged contractual provisions could</p> <p>6 promote entry by competing promoters?</p> <p>7 A. Sure. Zuffa has invested in its athletes,</p> <p>8 in their personas, in matching them with the right</p> <p>9 opponents, and so on, things we've discussed</p> <p>10 elsewhere. Those are costly investments by Zuffa.</p> <p>11 The challenged contract provisions partially</p> <p>12 protect the returns on those investments. So it</p> <p>13 makes it worthwhile for Zuffa to makes those</p> <p>14 investments in the first place.</p> <p>15 Now, after the investments are made if</p> <p>16 suddenly you change the rules and say, oh no, all</p> <p>17 of these restrictions on, you know, right of first</p> <p>18 refusal, champion's clause, the whole thing are out</p> <p>19 the window and now you've got these athletes that</p> <p>20 Zuffa made valuable, raised their productivity. If</p> <p>21 they can just leave because somebody else -- this</p> <p>22 is the plumber example I just gave you -- then they</p> <p>23 can go somewhere else. So there would be a</p> <p>24 transfer of wealth from Zuffa to the athletes, but</p> <p>25 in equilibrium it's not going to last long because</p>
<p>75</p> <p>1 don't want to train -- incur the cost of training</p> <p>2 plumbers for my firm because I make them into good</p> <p>3 plumbers and they go work somewhere else for the</p> <p>4 marginal product that I generated.</p> <p>5 Q. All right. Well, I -- I'll move on.</p> <p>6 Turn to paragraph 200 and in particular</p> <p>7 I'd like to focus your attention on a part of</p> <p>8 paragraph 200 that is on page 88. The second</p> <p>9 sentence -- or the first full sentence on the page</p> <p>10 says "In particular the restrictions on athlete</p> <p>11 mobility address potential market failures due to</p> <p>12 transaction costs and the free rider problem"; do</p> <p>13 you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And by "restrictions on athlete mobility"</p> <p>16 in this sentence you're referring to the</p> <p>17 contractual provisions that Plaintiffs are</p> <p>18 challenging in this case, correct?</p> <p>19 A. Generally speaking, yes.</p> <p>20 Q. How is it that the -- strike that.</p> <p>21 Turn to paragraph 68, please. In</p> <p>22 paragraph 68 you opine in the first sentence "It</p> <p>23 may be true that eliminating the challenged</p> <p>24 contract provisions could promote entry by</p> <p>25 competing promoters, at least temporarily, because</p>	<p>77</p> <p>1 now that everybody can just up and leave nobody's</p> <p>2 going to invest. That's what the paragraph is</p> <p>3 saying.</p> <p>4 Q. Okay. So you're postulating a change from</p> <p>5 the current world to a world where none of the</p> <p>6 challenged contractual provisions exist, is that</p> <p>7 right, in this paragraph?</p> <p>8 A. Yes. And it's -- it's not just a change</p> <p>9 of two hypotheticals like what if it had been this</p> <p>10 way forever on one planet and the other way forever</p> <p>11 on the other planet. It's in the middle of the</p> <p>12 existence of this you say no, all the contracts you</p> <p>13 wrote are out the window.</p> <p>14 Q. Okay. And in that instance with the</p> <p>15 challenge provisions out of the way, other MMA</p> <p>16 promoters could immediately retain Zuffa's</p> <p>17 athletes, right, if they wanted to?</p> <p>18 A. Well, they could as long as they're</p> <p>19 willing to pay up to the value that's been created</p> <p>20 by Zuffa. Some of that value's going to be Zuffa</p> <p>21 specific, but not all of it.</p> <p>22 Q. So, in your view, because Zuffa has</p> <p>23 invested in promoting these athletes they as a</p> <p>24 group are more valuable, all things equal, to a</p> <p>25 rival promoter than unranked fighters sitting in an</p>

20 (Pages 74 to 77)

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<p>78</p> <p>1 MMA gym somewhere; is that right?</p> <p>2 A. I think what you said is right, yeah.</p> <p>3 Q. And what it means to be more valuable in</p> <p>4 this context is that these fighters are capable of</p> <p>5 bringing in more revenues when they fight, correct?</p> <p>6 A. Yeah. The identification process and so</p> <p>7 on raises their interest, the public's interest in</p> <p>8 these particular fighters. Some of that return, as</p> <p>9 I said, was Zuffa specific, some of it's totally</p> <p>10 general like the plumbers.</p> <p>11 Q. And in this instance where you had the</p> <p>12 challenged provisions and then they're gone, a new</p> <p>13 or another MMA promotion could, in your words,</p> <p>14 expropriate existing Zuffa investments in its</p> <p>15 athletes; is that right?</p> <p>16 A. Yes. So Zuffa would have lost money on</p> <p>17 its investments that it made in the past. It</p> <p>18 wouldn't have -- it would not have gotten the</p> <p>19 returns on its investments.</p> <p>20 Q. So, in your view, at least in the short</p> <p>21 run, eliminating the challenged contractual</p> <p>22 provisions will enhance the mobility of the</p> <p>23 fighters; is that fair?</p> <p>24 A. I don't know if you would call it enhance</p> <p>25 the mobility. More of them will move because</p>	<p>80</p> <p>1 contracts are in effect restrictions on athlete</p> <p>2 mobility in paragraph 200, right? We worked</p> <p>3 through it.</p> <p>4 A. I don't know if I agree with your phrase.</p> <p>5 They are restrictions that protect the investments</p> <p>6 that Zuffa has made in athletes.</p> <p>7 Q. Turn to paragraph 200, please.</p> <p>8 A. Okay.</p> <p>9 Q. The second sentence or the first full</p> <p>10 sentence on page 88 says "In particular the</p> <p>11 restrictions on athlete mobility address potential</p> <p>12 market failures" --</p> <p>13 A. Okay. I'm referring to those challenged</p> <p>14 business practices. So in that sense they are</p> <p>15 restrictions on mobility that say you can't just up</p> <p>16 and leave.</p> <p>17 Q. And in your opinion, enhancing fighter</p> <p>18 mobility by removing restrictions from the</p> <p>19 contract -- that the contracts create in the short</p> <p>20 run at least would in your view facilitate rival</p> <p>21 entry; is that right?</p> <p>22 A. It might facilitate rival entry depending</p> <p>23 on fixed costs and things like that and what they</p> <p>24 foresee about this market because they</p> <p>25 can't -- well, it does get complicated. Forgive</p>
<p>79</p> <p>1 there's more subject to outside bidding. This is</p> <p>2 kind of like expropriating a -- you know, declaring</p> <p>3 a patent suddenly invalid and then anybody can make</p> <p>4 that formula, whereas they couldn't before. That</p> <p>5 helps for a little while, but nobody's going to</p> <p>6 invest in the research and development again.</p> <p>7 Q. So the athletes here are like a patent and</p> <p>8 with respect to a patent, say a pharmaceutical</p> <p>9 patent, once the patent expires or ends, the price</p> <p>10 tends to drop dramatically, correct?</p> <p>11 MR. ISAACSON: Objection to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. The generics -- now we're into patents.</p> <p>14 The generics tend to sell for less than the</p> <p>15 previous price of the brand name. As an aside,</p> <p>16 whether the brand name drug actually sells for a</p> <p>17 lower price is another more complicated question.</p> <p>18 Q. Bill and I have been through that together</p> <p>19 a long, long time ago.</p> <p>20 A. Okay.</p> <p>21 Q. All right. I'm going to move back to</p> <p>22 Zuffa. It's fair to say that in the short</p> <p>23 run -- strike that. Well, let me -- let me ask</p> <p>24 this question again.</p> <p>25 I think you said that the challenged</p>	<p>81</p> <p>1 me. If we say that Zuffa can't use these and other</p> <p>2 people can, then rival entry will occur.</p> <p>3 Q. So there are two options, either Zuffa</p> <p>4 would pay its fighters more or the rivals will come</p> <p>5 in and expropriate the value that Zuffa has created</p> <p>6 by investing in its fighters; is that fair?</p> <p>7 A. No. You're -- you're -- I said a little</p> <p>8 while ago that when you get rid of these</p> <p>9 restrictions Zuffa's not going to be able to invest</p> <p>10 in fighters and the interest in fights and things</p> <p>11 like that the way they did before because they</p> <p>12 can't capture their returns. So the -- the</p> <p>13 question I offer -- I just asked is what are you</p> <p>14 assuming about the entry. Do they come in under</p> <p>15 the same rules as Zuffa?</p> <p>16 Q. Oh, I see.</p> <p>17 A. Okay. Or are they allowed to do things</p> <p>18 that Zuffa did from the beginning and now we turn</p> <p>19 around and say Zuffa, you can't do that anymore but</p> <p>20 everybody else can and that's -- that's my</p> <p>21 question.</p> <p>22 Q. Okay. In paragraph 68 -- and I believe</p> <p>23 you referred to that in your answer earlier -- you</p> <p>24 say in the sentence beginning with "Suppose"; do</p> <p>25 you see that? I'd like you to look at that. It's</p>

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<p>82</p> <p>1 the third sentence of paragraph 68; do you see</p> <p>2 that?</p> <p>3 A. I'm not there yet.</p> <p>4 Q. "Suppose" is on the right-hand margin.</p> <p>5 A. Oh, here we are. Okay. Second</p> <p>6 sentence.</p> <p>7 Q. Yeah.</p> <p>8 A. Third sentence.</p> <p>9 Q. Third sentence. It says "Suppose Zuffa's</p> <p>10 contract provisions are found to be</p> <p>11 anticompetitive, then a potential competitor could</p> <p>12 recruit and contract with the existing stock of</p> <p>13 developed Zuffa athletes enjoying the fruits of</p> <p>14 Zuffa's past investments in developing those</p> <p>15 athletes. This would create a transfer of wealth</p> <p>16 to the stock of existing Zuffa athletes." Do you</p> <p>17 see that?</p> <p>18 A. Yes. That's what I said a few minutes</p> <p>19 ago.</p> <p>20 Q. You did. And I just want to understand</p> <p>21 what you mean here. What you're talking about when</p> <p>22 you talk about a transfer of wealth is from Zuffa</p> <p>23 to its fighters; is that fair?</p> <p>24 A. Zuffa would be worse off by having lost</p> <p>25 the returns on its investments.</p>	<p>84</p> <p>1 willing to pay -- I can leave immediately because</p> <p>2 we've assumed away these contractual restrictions</p> <p>3 and somebody's bid the value of what Zuffa created</p> <p>4 for my services, at least the value of what Zuffa</p> <p>5 has created to that firm for my services. So to</p> <p>6 the extent that I go I will be paid more ex post</p> <p>7 than I would have been paid, and so that is a</p> <p>8 transfer of wealth from one party to another.</p> <p>9 You've expropriated the investments that Zuffa</p> <p>10 made.</p> <p>11 Q. It's a transfer of wealth, in your view,</p> <p>12 from Zuffa to the fighters because in this instance</p> <p>13 Zuffa would either have to pay the fighters more or</p> <p>14 someone else would pay the fighters more, right?</p> <p>15 MR. ISAACSON: Objection to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I think I see where you're going with it</p> <p>18 and yes.</p> <p>19 Q. So at least in the short run enhancing</p> <p>20 fighter mobility by removing the challenged</p> <p>21 contracts would lead to higher UFC fighter</p> <p>22 compensation, right?</p> <p>23 A. For people who have already been invested</p> <p>24 in, but Zuffa's not going to invest again.</p> <p>25 Q. So for the existing stock of Zuffa</p>
<p>83</p> <p>1 Q. And what you mean by "lost the returns on</p> <p>2 its investments" is that in this situation, at</p> <p>3 least in the short run, Zuffa would pay its</p> <p>4 fighters more, correct?</p> <p>5 A. Well, I don't necessarily mean that at</p> <p>6 all. I mean that those athletes would go -- we've</p> <p>7 defined this now as a reduction in mobility costs.</p> <p>8 Some of these guys go somewhere else because</p> <p>9 somebody else pays for the productivity that Zuffa</p> <p>10 produced with its investments. It's the plumbers</p> <p>11 problem again. And, you know, whether Zuffa stays</p> <p>12 in business after this I don't even know because</p> <p>13 the premise of much of this is that these</p> <p>14 competitors -- I think we had it in this</p> <p>15 paragraph -- these competitors get to use rules</p> <p>16 that are now prohibited for Zuffa. So Zuffa's</p> <p>17 definitely at a competitive disadvantage in that</p> <p>18 world.</p> <p>19 Q. Okay. But I just want to understand what</p> <p>20 you mean by transfer of wealth. Presumably the</p> <p>21 Zuffa fighters who now are free of the contractual</p> <p>22 restrictions would move if they could get paid</p> <p>23 more, right, and that's what you mean by the</p> <p>24 transfer --</p> <p>25 A. Move -- the -- the amount that someone is</p>	<p>85</p> <p>1 athletes eliminating the challenged contracts, at</p> <p>2 least in the short run, would enhance fighter</p> <p>3 mobility and lead to higher fighter compensation,</p> <p>4 correct?</p> <p>5 A. It could do that.</p> <p>6 MR. ISAACSON: Objection to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. As I said, it depends on what we're</p> <p>9 assuming about what other firms can do. I mean, if</p> <p>10 we had a world where nobody could do this, then the</p> <p>11 other firms probably aren't going to want to hire</p> <p>12 them either because in equilibrium this business</p> <p>13 model's not going to work.</p> <p>14 Q. But the transfer of wealth occurs --</p> <p>15 presumably the transfer of wealth only occurs if</p> <p>16 someone is willing to pay the fighters more,</p> <p>17 correct?</p> <p>18 A. You have to have some market structure in</p> <p>19 place where someone is willing to pay more, but if</p> <p>20 the more is just a -- a -- the more relies on the</p> <p>21 fact that, hey, we get to hire these guys that we</p> <p>22 didn't have to invest in, great, and then we can</p> <p>23 write multi-contract -- multi-fight contracts with</p> <p>24 them and everything else. So it could be Bellator,</p> <p>25 terrific, they invested and we get to get him.</p>

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<p style="text-align: right;">86</p> <p>1 Q. Is it fair to say in the short run if we 2 eliminate the challenged contractual provisions, 3 one immediate effect is that fighters get paid 4 closer to the amount of event revenues that they 5 generate for the promotion; is that fair? 6 MR. ISAACSON: Objection to form. 7 BY THE WITNESS: 8 A. They'll get paid more than they would have 9 because they're getting some of the returns on the 10 investment that were previously shared with -- with 11 the investing firm. 12 Q. So in your view, the challenged 13 contractual provisions are what is allowing Zuffa 14 to pay the fighters below the marginal revenue 15 product of those fighters, correct? 16 MR. ISAACSON: Objection to form. 17 BY THE WITNESS: 18 A. No. I mean, it's -- in the long run -- 19 when you think about investments you have to think 20 about the costs and the returns. So anybody who's 21 making investments in -- any firm that's paying for 22 some of the investments in human capital has to 23 get, you know, at least a competitive return on 24 those investments. So it's not a one-period thing. 25 It's a multi-period thing. There's a kind of</p>	<p style="text-align: right;">88</p> <p>1 A. They're getting a return. So their 2 marginal revenue product over the -- I can't answer 3 this outside of the context of two periods because 4 I have to take the costs into account. Now, if 5 what you're trying to say -- let me just phrase it 6 so we're on the same page. Come back to my example 7 of the plumbers. For the marginal plumber in two 8 periods the return -- the investment cost is going 9 to be equal to -- what I pay has to be compensated 10 by a wedge between what his productivity would be 11 somewhere else and what I have to pay him in the 12 second period. Okay. So I might have some 13 restriction on whether he can leave right away and 14 all that. And now you tell me that restriction's 15 gone. So, yeah, somebody else will pay up to what 16 that guy's worth in the second period, but that 17 doesn't mean his marginal revenue product doesn't 18 take into account what I paid for him in the first 19 period, but -- but that's in the past now and it's 20 gone and we let him go, he's gone. I'll never make 21 that investment again, but he's gone and he'll get 22 paid more, and that's the sense in which there's a 23 transfer of wealth relative to the outcome that we 24 had when we had a contract that protected the 25 investments.</p>
<p style="text-align: right;">87</p> <p>1 before and -- period 1 and period 2 and the firm 2 invests and it gets the returns. So even under 3 competition if you turned around to firms and said, 4 look, you don't get the returns, that would be a 5 transfer of wealth to -- in the second period to 6 the people who are invested in in the first period. 7 So getting more of your marginal revenue product 8 you're thinking about it like at a single point in 9 time whereas the relevant thing is it's dynamic. 10 It's -- it's how many periods are you going to be 11 here and what I do -- what I do with you when 12 you're young and a novice and unknown and how do I 13 get the returns on what I just did for you to make 14 you more productive. 15 Q. Okay. I understand you're making a 16 dynamic long-run argument. I'm just trying to 17 understand how it works in the short run for the 18 existing stock of Zuffa athletes. And for the 19 existing stock of Zuffa athletes in the short run 20 what is allowing Zuffa to pay fighters below their 21 marginal revenue product are the challenged 22 contractual restrictions, correct? 23 MR. ISAACSON: Objection to form, asked 24 and answered. 25 BY THE WITNESS:</p>	<p style="text-align: right;">89</p> <p>1 Q. Turn to paragraph 113, please. 2 MR. CRAMER: Do you need a break? 3 THE REPORTER: After this. 4 MR. CRAMER: We'll take a break after 5 this. 6 BY MR. CRAMER: 7 Q. Towards the end of that paragraph, 8 paragraph 113, you have a sentence that begins "As 9 explained above, if athletes"; do you see that? 10 A. Yes. 11 Q. This says "As explained above, if athletes 12 can freely switch to competing promoters that pay 13 'competitive compensation' given the athlete's 14 human capital, human capital that was largely 15 developed by an initial promoter, then there is 16 little incentive for the initial promoter to make 17 the investments that contribute to that human 18 capital in the first place"; do you see that? 19 A. Yes. 20 Q. So here you're positing a world without 21 the challenged contracts, right? In other words, 22 if athletes can freely switch; is that right? 23 A. I think that's a fair statement, yeah. 24 Q. And in this world you are opining 25 that -- strike that.</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">90</p> <p>1 And the premise of your argument is that 2 if all of a sudden athlete mobility were enhanced, 3 then other promoters would be willing to pay UFC -- 4 UFC fighters up to the value of their human 5 capital; is that right? 6 A. Well, I'm -- I'm positing that -- you can 7 interpret this in two ways. One, you had me in 8 paragraph something, 68 or something. 9 Q. 68. 10 A. And we're talking about removing the 11 contract restrictions and having a but-for world 12 where either everybody else can use those contract 13 restrictions or nobody else can and the outcomes in 14 those two worlds are different. Here we can -- if 15 I say -- if athletes can freely switch, then these 16 investments are not going to occur. I'm sort of 17 comparing two but-for worlds. How would this 18 industry operate absent the contract restrictions, 19 and the -- to the extent that it takes the business 20 acumen of the promoter and so on to develop those 21 personas and value, there would be a lot less of 22 that development. And it says there's little 23 incentive for the initial promoter to make the 24 investments that contribute to human capital in the 25 first place. So we'd have an -- we'd have an</p>	<p style="text-align: right;">92</p> <p>1 have said promoters -- and consumers worse off." 2 Q. Right, but -- 3 A. So is this statement about two different 4 market -- the equilibrium under two different 5 market structures either these kinds of 6 restrictions are allowed or they're not allowed, 7 and I'm talking about well, if they're not allowed 8 the world's going to be a lot different than it 9 is. 10 Q. What did you mean when you said "If 11 athletes can freely switch to competing promoters 12 that pay competitive compensation given the 13 athlete's human capital"? 14 MR. ISAACSON: Asked and answered. 15 BY THE WITNESS: 16 A. It means that if there's free mobility I 17 can switch to anybody who will pay "competitive 18 compensation," but, you know, that -- in the 19 equilibrium that level of compensation, that value 20 is going to be lower. 21 Q. I'm asking not -- not at the long-run 22 equilibrium, but in the short run. 23 A. But that's not what this sentence is 24 about. 25 Q. I know, but the sentence is premised on</p>
<p style="text-align: right;">91</p> <p>1 equilibrium with less investment in that type of 2 human capital. 3 Q. All right. I understand your dynamic 4 argument. I'm asking about now the short run and 5 the premise of your point that if athletes can 6 freely switch to competing promoters, competitive 7 comp- -- those promoters would pay athletes 8 compensation given the athlete's human capital is 9 that these competing promoters would be willing to 10 pay more than the UFC would given the athlete's 11 human capital, right? 12 MR. ISAACSON: Objection to form. 13 BY THE WITNESS: 14 A. No, that's not what I'm saying here. 15 You're addressing a different problem. Let's just 16 be explicit about what I'm saying here. If 17 athletes can freely switch -- and I'm making a 18 statement about the market and if athletes can 19 freely switch in this market, then initial 20 promoters wouldn't be making the investments in 21 human capital in the first place. 22 Q. I understand that. 23 A. Okay. And so, I mean, read the next 24 sentence. "Reducing promotional investments would 25 make athletes as well as the promoter -- I could</p>	<p style="text-align: right;">93</p> <p>1 the notion -- and tell me if I'm wrong -- that if 2 you enhanced athlete's mobility in the short run 3 competing promoters would pay a higher amount of 4 the athlete's human capital than the UFC would be 5 willing to pay, correct? 6 A. Well, that's not what this sentence is 7 about. I mean, we -- we can talk about -- if you 8 want to talk about that problem I'm happy to talk 9 about it, but that's not what this sentence is 10 about. This is about what would the industry look 11 like in a world where you can't do this. 12 Q. Right. I understand that. You're making 13 a dynamic long-term argument, but it seems to me 14 that your dynamic long-term argument is premised on 15 something happening in the short run. 16 A. No. Let me explain. I've got two 17 worlds -- 18 MR. ISAACSON: I'm going to object to 19 form. 20 BY THE WITNESS: 21 A. Okay. I have two worlds. World -- east 22 of the Rockies we can have -- and there's -- and 23 nobody goes from one side to the other. East of 24 the Rockies I'm going to have one set of rules and 25 the industry develops the way it develops, and the</p>

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<p style="text-align: right;">110</p> <p>1 during the right-to-match period some bidders 2 would, all things equal, be more reluctant to bid 3 when a fighter is under a right to match because 4 the bidding -- by bidding to Zuffa you're 5 disclosing internal financial information about 6 your willingness to pay for the fighter; is that 7 fair? 8 MR. ISAACSON: Objection to form. 9 BY THE WITNESS: 10 A. I don't know how much -- how secret the 11 financial information is. So I've never thought 12 about whether it's just oh, you're showing what 13 this guy's worth. If you have inside 14 information -- let's put it that way -- put it this 15 way. Suppose that some fighters, say Mr. Melendez 16 just so we can have a name, is unusually valuable 17 to Bellator, then the offer that -- that 18 Mr. Melendez gets from Bellator reveals something 19 about his value to Bellator and symmetrically this 20 offer that Zuffa has reveals something about his 21 value to Zuffa and it would go the other way too 22 because Bellator has these contracts so that if 23 some guy got an offer from Zuffa it would reveal 24 something. 25 Q. So let's assume for purposes of this</p>	<p style="text-align: right;">112</p> <p>1 A. If he's considering taking it, yeah. 2 Q. Right. And by showing this bid from a 3 rival MMA promoter to Zuffa, Zuffa is learning some 4 information about the value of this athlete to the 5 rival promoter, correct? 6 A. Well, yeah. I mean, they -- they learn 7 what Bellator's offering the athlete. That's what 8 they learn. 9 Q. And my question is simply as compared to 10 an athlete during a right-to-match period as 11 opposed to an athlete who is beyond his 12 right-to-match period a rival MMA promoter would be 13 less likely to bid during a right-to-match period 14 than after the right-to-match period is expired, 15 correct? 16 MR. ISAACSON: Objection to form. 17 BY THE WITNESS: 18 A. I mean, I -- your -- I think your question 19 is -- forgive me for saying so, but it's a little 20 confused. I don't -- you know, I'm agreeing with 21 you on this, agreeing with you on this because it's 22 all premises, and then it's about the 23 right-to-match period. If there was no right to 24 match and Mr. Melendez brings in an offer from 25 whomever, Bellator, I learn something and the --</p>
<p style="text-align: right;">111</p> <p>1 question that Zuffa is highly secretive of its 2 contractual negotiations with its fighters. Would 3 it be fair to say that all things equal the 4 willingness of a third party to bid for a UFC 5 athlete during the right-to-match period would be 6 less than in a world where the right-to-match 7 period had been expired because the bidding party 8 would need to disclose some information to Zuffa; 9 is that fair? 10 MR. ISAACSON: Objection to form. 11 BY THE WITNESS: 12 A. I got -- I'm sorry. Your sentence went on 13 a long time and it had a lot of hypotheticals in it 14 and I lost the train. 15 Q. Okay. Let's start again. There's a 16 right-to-match period -- 17 A. Yes. 18 Q. -- during which Zuffa has matching 19 rights? 20 A. Yes. 21 Q. And during that period if the athlete goes 22 out and gets a bid from another MMA promoter -- 23 A. Yes. 24 Q. -- that athlete is required, then, to 25 bring that bid to Zuffa, correct?</p>	<p style="text-align: right;">113</p> <p>1 the athlete has the incentive to, if it's a really 2 good offer, show it and say -- forget about right 3 to match, you know. It's just like, okay, we're 4 going to have competitive bidding at this point in 5 time and the guy comes in with his Bellator offer 6 and he says here's my Bellator offer. Now, he 7 might -- or maybe he makes up stuff about his 8 Bellator offer, I don't know, but he's putting -- 9 let's say he puts the Bellator offer there. I 10 mean, that's how it works in my business. You 11 know, you get an offer from some other university, 12 you take it down to the dean, and say there it is. 13 So they learn what I'm worth to Princeton or 14 Harvard or Pasadena City College or something and 15 they can match it if they want to. The difference 16 in the right of first refusal is that for the 17 objectively verifiable elements of the offer, which 18 are a little -- can be a little vague I understand, 19 that if I match them you've -- you stay, but none 20 of the information revealing stuff that you talked 21 about is particular to the right of first refusal. 22 Q. Would you agree that, all things equal, an 23 athlete is less likely -- strike that. 24 Why would an athlete want to bring a rival 25 bid -- an athlete at Zuffa who has -- who's beyond</p>

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<p style="text-align: right;">114</p> <p>1 his right to match, why would that athlete want to 2 bring Bellator's bid to Zuffa? 3 A. Because he says, look, you beat this offer 4 I might stay. 5 Q. If you beat this offer I might stay, and 6 that would benefit the athlete if Zuffa beat the 7 offer, right? 8 A. Well, yeah. I mean, there's nothing wrong 9 with that. I'm going to bring in offers. 10 Q. And what would happen if after Zuffa said 11 I'll beat that offer by a dollar the athlete went 12 back to Bellator and said would you beat this 13 offer, would that benefit the athlete? 14 A. Well, in the hypothetical you're giving, 15 yeah, which means that Bellator didn't make its 16 best offer, but that's okay. 17 Q. Is it fair to say that because a rival 18 bidder when an athlete is constrained by a 19 right-to-match period knows that Zuffa could just 20 accept the offer that a rival bidder would be less 21 reluc- -- more reluctant, all things equal, to make 22 a bid in the first place? 23 A. That could happen in equilibrium. You 24 know, you're saying all other things the same. 25 Q. Yes.</p>	<p style="text-align: right;">116</p> <p>1 A. My answer's the same. 2 Q. All right. Turn to paragraph -- 3 A. Let's be -- let's be careful. I mean, 4 that's an equilibrium -- again, that's an 5 equilibrium and the reason they have the restricted 6 free agency period is because there's specific 7 value that has been invested in by the franchise. 8 And so the equilibrium is that with the existence 9 of restricted free agency there is a period 10 where -- let us presume all the premises of -- that 11 you've talked about are true where offers are less 12 likely to arrive, but that's within the context of 13 restricted free agency. If you didn't have 14 restricted free agency, period, then players and 15 franchises would all be less valuable. So 16 that's -- that's a completely different market than 17 what this is. So you can't -- this is always true 18 in economics. You have to figure out what's the 19 equilibrium and you can't take a contract that 20 exists and say, okay, in this part of the contract 21 this many offers arrive, in that part of the 22 contract that many offers arrive, and then say, 23 well, the net -- then the second part is just like 24 what the world would be if there's no contract. 25 That's not the way it works. You've got to say if</p>
<p style="text-align: right;">115</p> <p>1 A. I think what you're -- what you're talking 2 about is there's a range of values for this 3 athlete -- I'd have to work it out, but there's a 4 range of values for this athlete to the other firm 5 and it has to make a decision about whether to make 6 it a bid. 7 Q. Yes. 8 A. So there could be a lower probability of a 9 bid. 10 Q. Are you familiar with restricted free 11 agency in basketball? 12 A. Yeah, somewhat. 13 Q. And are you aware that athletes during the 14 restricted free agency period tend to get less bids 15 than when athletes are no longer during the 16 restricted free agency period? 17 A. I've not studied that, but it doesn't 18 surprise me. 19 Q. And is it also fair to say that athletes 20 during a restricted free agency period as compared 21 to athletes after the restricted free agency period 22 is over tend to get paid less during -- get lower 23 bids during the restricted free agency period than 24 after the restricted free agency period, all things 25 equal?</p>	<p style="text-align: right;">117</p> <p>1 we took away the contract people would invest less, 2 basketball players would be less popular, 3 basketball would be less popular. It's the whole 4 thing and that's why the contract's there. 5 Q. Turn to paragraph 101 -- 101, please. 6 A. Yes. 7 Q. All right. You offer -- on page 44 you 8 offer a hypothetical at the top, do you see that, 9 "Consider an athlete" -- 10 A. Yes. 11 Q. -- "who has reached the end of his 12 contract with Zuffa"? 13 A. Yes. 14 Q. And then you say "Assume that the 15 athlete's talents and reputation are worth \$100,000 16 to Bellator and Bellator offers that amount. 17 Because some aspects of the athlete's Zuffa-created 18 development are specific to Zuffa, the athlete is 19 worth more to Zuffa, say \$150,000, than to 20 Bellator." Do you see that? 21 A. Yes. 22 Q. Then you go on to say "In negotiation with 23 Zuffa the athlete has an incentive to overstate the 24 value of other unmeasured aspects of its Bellator 25 offer forcing Zuffa to pay more and thus capturing</p>

30 (Pages 114 to 117)

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<p style="text-align: right;">118</p> <p>1 some of the returns on Zuffa's investment. The</p> <p>2 right to match provision -- provision avoids this</p> <p>3 'holdup' problem allowing Zuffa to retain the</p> <p>4 athlete by matching the observable and verifiable</p> <p>5 elements of his Bellator offer." Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. So here you're positing an athlete that is</p> <p>9 worth \$100,000 to Bellator; is that right?</p> <p>10 A. After investments have been made, yes.</p> <p>11 Q. After Zuffa's investments have been</p> <p>12 made?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And that is because Bellator</p> <p>15 presumably believes it can earn at least a hundred</p> <p>16 thousand dollars in additional event revenues when</p> <p>17 that athlete fights, correct?</p> <p>18 A. I don't know if it's event revenues. He's</p> <p>19 worth a hundred thousand dollars to Bellator.</p> <p>20 Q. Because Bellator believes he is going to</p> <p>21 generate at least a hundred thousand dollars in</p> <p>22 earnings, correct, for Bellator?</p> <p>23 A. Not his -- for Bellator, yeah. It could</p> <p>24 come from selling bobblehead dolls. I don't care</p> <p>25 what it comes from.</p>	<p style="text-align: right;">120</p> <p>1 portable and that's the hundred thousand dollars to</p> <p>2 Bellator.</p> <p>3 Q. Is it fair to say that this athlete's</p> <p>4 marginal revenue product at Zuffa in your example</p> <p>5 is at least \$150,000?</p> <p>6 A. Well, you know, with all the other stuff</p> <p>7 that's going on at Zuffa -- look, willingness to</p> <p>8 pay by Zuffa is \$150,000.</p> <p>9 Q. And so Zuffa must think that the athlete's</p> <p>10 marginal revenue product is at least \$150,000,</p> <p>11 correct?</p> <p>12 A. I'm saying that's the -- that's the upper</p> <p>13 limit. So if -- I'm not sure how you're using</p> <p>14 marginal -- willingness to pay is the largest</p> <p>15 amount that Zuffa would pay to have this athlete.</p> <p>16 Q. Okay.</p> <p>17 A. And that's \$150,000.</p> <p>18 Q. Now, you say that the right to match</p> <p>19 allows Zuffa to avoid being, as you say, held up by</p> <p>20 the fighter who will force Zuffa to pay more; is</p> <p>21 that right?</p> <p>22 A. Are you just reading what I -- what I</p> <p>23 said?</p> <p>24 Q. I'm paraphrasing.</p> <p>25 A. Okay. Well, let's read. "The athlete has</p>
<p style="text-align: right;">119</p> <p>1 Q. Okay. Is what you're saying that the</p> <p>2 athlete's marginal revenue product at Bellator is</p> <p>3 at least a hundred thousand dollars; is that the</p> <p>4 same concept?</p> <p>5 A. Well, if what we're talking about is that</p> <p>6 everybody at -- you know, all the other things at</p> <p>7 Bellator are held constant and we add this person,</p> <p>8 then willingness to pay by Bellator is a hundred</p> <p>9 thousand dollars.</p> <p>10 Q. Okay. And in this example the fighter's</p> <p>11 revenue generating power is greater at Zuffa than</p> <p>12 at Bellator?</p> <p>13 A. In this example, that's correct.</p> <p>14 Q. Why? What explains that?</p> <p>15 A. Because I've been fighting Zuffa athletes</p> <p>16 and, you know, whatever rivalries have been built</p> <p>17 up, Zuffa has a fan base the way lots of branded</p> <p>18 firms have a customer base that has some</p> <p>19 differential loyalty to them. They're a -- they're</p> <p>20 a differentiated product and they -- they found a</p> <p>21 target audience that values what UFC does. So all</p> <p>22 the firms are not just generics in this market. So</p> <p>23 I've made these investments and I would design the</p> <p>24 investments so that they increase the value to me,</p> <p>25 but some of that's -- some of that human capital is</p>	<p style="text-align: right;">121</p> <p>1 an incentive to overstate the value of the other</p> <p>2 unmeasured aspects of the Bellator offer" -- that's</p> <p>3 one of the tactics he could use -- "forcing Zuffa</p> <p>4 to pay more and thus capturing some of the returns</p> <p>5 on Zuffa's investment."</p> <p>6 Q. Well, the holdup, in your view is the</p> <p>7 fighter demanding Zuffa to pay him more than a</p> <p>8 hundred thousand dollars; is that right?</p> <p>9 A. Yeah, because the \$150,000 is the amount</p> <p>10 that helps to cover the investments that Zuffa</p> <p>11 previously made in the fighter.</p> <p>12 Q. And so what the right to match is allowing</p> <p>13 the fighter to do is to cause the fighter to be</p> <p>14 paid -- I'm sorry. What the right to match is</p> <p>15 allowing Zuffa to do is to pay the fighter less</p> <p>16 than the fighter would be paid without the right to</p> <p>17 match; is that right?</p> <p>18 A. Well, again, it comes down to are you</p> <p>19 taking away the rules, are you not taking away the</p> <p>20 rules. If -- if the rule is that Zuffa invested in</p> <p>21 this -- let's -- suppose it costs \$110,000 to</p> <p>22 invest in this person. And so Zuffa calculates</p> <p>23 that if the person stays he's worth \$150,000 with</p> <p>24 some probability. Okay. And so ex post he's worth</p> <p>25 the 150,000. And the person can just go to</p>

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<p style="text-align: right;">122</p> <p>1 Bellator for -- he's only worth it if I can pay him 2 in the second period a hundred thousand dollars. 3 Okay. So if -- but if he gets more than that 4 hundred thousand dollars the initial investment 5 wasn't worthwhile, then I'm not going to invest in 6 him ex post if I know he's going to be able to hold 7 me up for that surplus that was generated to cover 8 the cost of the investment in the first place. 9 Q. Okay. Let's assume now that you're Zuffa 10 and you don't know, right? You're assuming that 11 there's a world with a right to match and you make 12 the investments that you make in the fighter that 13 you just identified. If we immediately and all of 14 a sudden remove the right to match, you would agree 15 that that fighter would be paid more than if the 16 right to match would not have been eliminated, 17 correct? 18 A. Yeah. We've danced around this question 19 over and over again. Are we -- 20 MR. ISAACSON: Objection to form. 21 BY THE WITNESS: 22 A. Are we taking away the right to match 23 universally or for this particular fighter? 24 Q. Let's just say for this particular 25 fighter.</p>	<p style="text-align: right;">124</p> <p>1 Q. Okay. So in the situation where Zuffa 2 forgot and didn't know that the right to match was 3 not in the contract of this fighter, you would 4 agree that Zuffa would make those investments 5 thinking that the fighter was subject to a right to 6 match and then as a result of not having the right 7 to match that fighter would be able to be paid more 8 than in a world where that fighter had a right to 9 match, correct? 10 MR. ISAACSON: Objection to form. 11 BY THE WITNESS: 12 A. He can then expropriate Zuffa's 13 investments, that's true. So -- I mean, I don't 14 know why this is an interesting problem, but maybe 15 we'll figure it out later. 16 MR. ISAACSON: Do you want to take a break 17 at this point? 18 MR. CRAMER: One minute. 19 BY MR. CRAMER: 20 Q. Is it your opinion that any -- strike 21 that. 22 Have you seen any fighters that were able 23 to negotiate away the right to match in their 24 contracts? 25 A. You know, I don't recall. I might have.</p>
<p style="text-align: right;">123</p> <p>1 A. Okay. So this guy -- the Melendez 2 question we talked about a few minutes ago. I'm 3 giving this person a unique ticket that says the 4 rules don't apply to you. 5 Q. Let's -- here's the hypothetical, assume 6 that Melendez does not have a right to match in his 7 contract, he negotiated it away. 8 A. Somebody forgot. 9 Q. Somebody forgot. 10 A. Somebody forgot. Okay. But that's 11 important. 12 Q. Okay. 13 A. That's actually really important because 14 if somebody forgot, then they're going to invest in 15 this dude and -- like they've got it and then 16 they're going to realize ex post he's going to come 17 in and say ha ha, you invested in me but there's no 18 restriction on what I can do because you forgot to 19 check the box and he brings in some lawyer that 20 said -- and -- and Zuffa says we give up. Yeah, we 21 can collect the returns on Zuffa's investment then, 22 but that's a very specific thing, they forgot to 23 check the box, because if you negotiate it away, 24 then Zuffa knows what's going to happen and they're 25 going to invest less.</p>	<p style="text-align: right;">125</p> <p>1 I've seen lots of stuff. 2 Q. It's fair to say that the vast majority of 3 Zuffa's contracts have the right to match provision 4 in it, correct? 5 A. Yes. I think we have a table to that 6 effect. 7 MR. CRAMER: Okay. All right. We can go 8 off the record. 9 THE VIDEOGRAPHER: Going off the record at 10 12:52. 11 (Whereupon, at 12:52 p.m., the 12 deposition was recessed, to 13 reconvene at 1:30 p.m., this 14 same day.) 15 16 17 18 19 20 21 22 23 24 25</p>

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<p style="text-align: right;">126</p> <p>1 AFTERNOON SESSION 2 (1:41 p.m.) 3 THE VIDEOGRAPHER: We are going back on 4 the record at 1:41. This begins disk No. 4. 5 ROBERT TOPEL, 6 the witness at the time of recess, having been 7 previously duly sworn, was further examined and 8 testified as follows: 9 EXAMINATION 10 (Resumed) 11 BY MR. CRAMER: 12 Q. Please turn to paragraph 87 of your 13 report, page 36. You say there at the beginning of 14 the paragraph "Both athletes and promoters make 15 considerable investments that increase the value of 16 the product offered to the public, athletes through 17 their training and promoters through promoting MMA 18 events and athletes." Do you see that? 19 A. Yes. 20 Q. Okay. And then you go on to say that 21 "Investments and training are borne" -- I'm sorry. 22 "Investments and training borne by the athletes are 23 not subject to free riding because training is 24 embodied in the individual athlete"; do you see 25 that?</p>	<p style="text-align: right;">128</p> <p>1 I've forgotten. 2 Q. You're aware that UFC athletes aren't paid 3 salaries, correct? 4 A. Yes. 5 Q. So it's your understanding that if an 6 athlete goes to a gym he could submit that for 7 reimbursement to the UFC? 8 A. I didn't say that. 9 Q. So how in your understanding is an athlete 10 paid for going to a gym to train? 11 A. I didn't say that either. 12 Q. Okay. So you just don't know one way or 13 another? 14 A. I said if I knew at some point whether 15 there was anybody who got any reimbursement for 16 training time or paying for the coach or anything 17 like that, I don't recall it. 18 Q. All right. I'm not asking you about 19 whether any person ever at the UFC was paid for 20 training. My question is do you know one way or 21 another whether the UFC in general pays its 22 fighters for training expenses? 23 A. I don't recall it. 24 Q. Do you have an understanding one way or 25 another about whether the UFC pays for fighter's</p>
<p style="text-align: right;">127</p> <p>1 A. Yes. 2 Q. And the point you're making there is that 3 athletes can take the skills they created through 4 their training investments to other promoters? 5 A. Yes. And the skills they develop are 6 general in that sense. 7 Q. So it's your understanding that the UFC 8 does not, as a general matter, invest in fighter 9 training or pay for fighter training or 10 development? 11 A. I'm not saying that. It says "Investments 12 in training borne by the athletes themselves are 13 not subject to free riding because the training's 14 embodied in the individual athlete." 15 Q. All right. Well, let me just ask you 16 that. Is it -- is it or is it not your 17 understanding that UFC does not as a general matter 18 invest in fighter training? 19 A. I don't recall if they pay for like gym 20 time or something like that. I don't think they 21 do, but it's not really material to my opinions. 22 Q. So you don't know one way or another 23 whether the UFC pays athletes for time they spend 24 in gyms; is that fair? 25 A. I don't recall. If I knew at some point,</p>	<p style="text-align: right;">129</p> <p>1 trainers? 2 A. I don't recall. 3 Q. Do you know one way or another whether the 4 UFC pays for a fighter's sparring partners? 5 A. I don't recall. 6 Q. Do you know one way or another whether the 7 UFC pays for a UFC's business manager -- I'm 8 sorry -- a UFC's fighter's business manager? 9 A. I have no recollection. 10 Q. Do you know one way or another whether the 11 UFC pays for a fighter's meals while they're 12 training? 13 A. Well, see, you dropped in the "while 14 they're training." I think there's -- there are 15 certain things that are paid for around the time of 16 an event, I know that. I don't recall seeing in a 17 contract anything about paying for meals while 18 they're training. 19 Q. So you're aware that in UFC fighter 20 contracts the UFC agrees to pay for certain things 21 around an event; is that right? 22 A. Yes. 23 Q. Have you ever seen a UFC fighter contract 24 in which the UFC agreed to pay for training 25 expenses that were not around an event?</p>

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<p style="text-align: right;">130</p> <p>1 A. I haven't seen it in a contract, but I'm 2 not in a position to say it never happened. 3 Q. It might happen, but you don't know one 4 way or another; is that your opinion? 5 A. That's correct. 6 Q. Do you know one way or another whether the 7 UFC pays for a fighter's travel when they're 8 training, not around an event? 9 A. I've never seen such an expense in a 10 contract. If I have, I don't remember. 11 Q. Do you know one way or another whether the 12 UFC pays for a fighter's general medical care 13 separate and apart from anything that might happen 14 in a bout? 15 A. That's different. I recall something 16 about medical care. I can't remember what it is. 17 Injuries in a bout might be taken care of. I can't 18 remember. 19 Q. Do you know one way or another whether the 20 UFC provides fighters who are fighters for the UFC 21 general medical insurance? 22 A. I'm trying to remember and I don't as I 23 sit here. 24 MR. ISAACSON: Objection to form. 25 BY MR. CRAMER:</p>	<p style="text-align: right;">132</p> <p>1 spent on MMA training in a rational way the sport 2 will benefit generally, right? 3 A. Are you saying that there's spill-overs 4 from my training onto other people? 5 Q. Correct. Yes. 6 A. Then there would be too little training 7 because I don't get all the returns to my training. 8 That could be true. There could be an 9 externality. 10 Q. And putting aside the externality issue, 11 all things equal, the more money that fighters 12 spend on rational training for MMA, the more 13 consumers of the sport will benefit, correct? 14 MR. ISAACSON: Objection to form. 15 BY THE WITNESS: 16 A. You think you're saying -- you said 17 there's no externality and I think you said there 18 is an externality but -- now, but that -- the more 19 people train the more -- I think what you're trying 20 to get at is that the more people train the more 21 people are willing to pay to watch them battle it 22 out in the octagon. Is that what you're trying to 23 say? 24 Q. Well, put it this way. The more people 25 train the higher quality fights there will be, all</p>
<p style="text-align: right;">131</p> <p>1 Q. You're aware that UFC fighters are 2 independent contractors, correct? 3 A. Yes. 4 Q. And are you familiar -- strike that. 5 Have you in your work in this case 6 computed or quantified anywhere the amount of money 7 that the UFC has paid fighters for training? 8 A. No. I think you know that. Yeah. 9 Q. So in paragraph 87 you referred to 10 "Returns on a fighter's training investments"? 11 A. Yes. 12 Q. You would agree that all things equal, the 13 more training a fighter does the better an athlete 14 that fighter will be? 15 A. If the training is rational, yeah. That 16 would be the point of training. 17 Q. And, all things equal, the more rational 18 training fighters do generally the better MMA 19 product they will be, correct? 20 A. Yes. 21 Q. And, all things equal, the better MMA 22 product the more demand there will be for it, 23 correct? 24 A. Yes. 25 Q. So, all things equal, if more money is</p>	<p style="text-align: right;">133</p> <p>1 things equal; is that right? 2 A. Well, that could be true. I don't know 3 the answer because it could be a war of attrition 4 where, you know, you train -- given my level of 5 training you train harder than me and given your 6 level of training I choose how to -- how hard to 7 train and we don't really get anywhere. I mean, it 8 could be that kind of world where the training 9 itself is even excessive, I guess, but I think I 10 see where you're going. If these guys are 11 investing in their own general human capital it's 12 going to raise their value not only to Zuffa, but 13 to anyone else in the -- in this business. 14 Q. Right. What do you mean "in this 15 business"? 16 A. In the MMA business. 17 Q. So if they spend money investing in their 18 human capital by training to be a better MMA 19 fighter, those skills are going to be -- are going 20 to help them in the MMA business; is that right? 21 A. I think that's why they train. 22 Q. Are you familiar with the reserve clause 23 in baseball? 24 A. Generally speaking, yes. 25 Q. Fair to say that that clause was once part</p>

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<p style="text-align: right;">134</p> <p>1 of Major League Baseball player contracts, right?</p> <p>2 You're generally familiar with that?</p> <p>3 A. Yes.</p> <p>4 Q. And the clause in general stated something</p> <p>5 to the effect of that the rights of the player were</p> <p>6 retained by the team even after the contract</p> <p>7 expired; is that fair?</p> <p>8 A. The rights to the player playing baseball?</p> <p>9 Q. Yes, playing baseball.</p> <p>10 A. Okay. There might have been geographic</p> <p>11 restrictions and things like that. I can't</p> <p>12 remember, but yes, in playing Major League</p> <p>13 Baseball.</p> <p>14 Q. It was a strict limitation on the</p> <p>15 athlete's mobility in baseball, right?</p> <p>16 A. In Major League Baseball.</p> <p>17 Q. In Major League Baseball.</p> <p>18 Would you agree that the reserve clause</p> <p>19 was a means by which the major --</p> <p>20 A. Hold -- hold -- hold on. You said</p> <p>21 mobility.</p> <p>22 Q. Yes.</p> <p>23 A. It might not have affected mobility at</p> <p>24 all. It was a matter of who does the competing to</p> <p>25 move the resource from team A to team B.</p>	<p style="text-align: right;">136</p> <p>1 efficient?</p> <p>2 A. I didn't say it was efficient. I just --</p> <p>3 I don't know how you got so out of that. I just</p> <p>4 said that they transferred the property rights, the</p> <p>5 ownership rights over the resource or over the</p> <p>6 services and the -- the allocation of the resource</p> <p>7 may not have changed and I think a lot of people</p> <p>8 claim that it didn't change, but there was a</p> <p>9 transfer of wealth over to -- from one side of the</p> <p>10 market to the other.</p> <p>11 Q. So the allocation as between which team a</p> <p>12 player would play on did not change, but by</p> <p>13 transfer of wealth you mean that instead of the</p> <p>14 player getting paid more the teams kept more of the</p> <p>15 player's human capital, correct?</p> <p>16 MR. ISAACSON: Objection to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. They kept more of the -- the returns on</p> <p>19 the general human capital that they had.</p> <p>20 Q. The teams kept more or the players kept</p> <p>21 more?</p> <p>22 A. Prior to the elimination of the reserve</p> <p>23 clause.</p> <p>24 Q. The teams kept more of the general human</p> <p>25 capital that the players had?</p>
<p style="text-align: right;">135</p> <p>1 Q. Explain that.</p> <p>2 A. Prior to -- and -- and prior to the</p> <p>3 elimination of the reserve clause the rights in --</p> <p>4 over a long period of time to the baseball-playing</p> <p>5 services of the baseball player resided with the</p> <p>6 original contracting team that signed the kid. And</p> <p>7 so just like in -- think back to Babe Ruth who was</p> <p>8 on the Red Sox. He was on the Red Sox under the</p> <p>9 reserve clause and the Yankees -- he was more</p> <p>10 valuable as a Yankee than as a Red Sox. So the</p> <p>11 Yankees bought his contract from -- from the Red</p> <p>12 Sox and he played out his career there until he</p> <p>13 went to the Dodgers and other places at the end of</p> <p>14 his career. So the competition for the resource</p> <p>15 was still there and -- but who owned the rights was</p> <p>16 changed.</p> <p>17 Q. Okay.</p> <p>18 A. So that mobility -- I think the evidence</p> <p>19 is mobility didn't change much at all -- much, if</p> <p>20 at all. It's just the competition was taking place</p> <p>21 between different parties for the same valuable</p> <p>22 resource and the resource generally ended up where</p> <p>23 it was most valuable. Hence, Babe Ruth to the</p> <p>24 Yankees.</p> <p>25 Q. So, in your view, the reserve clause was</p>	<p style="text-align: right;">137</p> <p>1 A. The returns.</p> <p>2 Q. The returns.</p> <p>3 A. They didn't keep the human capital. They</p> <p>4 couldn't hold onto it or eat it or anything like</p> <p>5 that.</p> <p>6 Q. They made more money from it, correct?</p> <p>7 A. Then that gets complicated too because</p> <p>8 they had to buy the franchises and -- they got a</p> <p>9 competitive rate of return. There was a loss,</p> <p>10 let's put it that way. When the reserve clause was</p> <p>11 eliminated there was a loss to the team owners who</p> <p>12 had bought teams based on the premise that this is</p> <p>13 what the rules were.</p> <p>14 Q. Is your view that the reserve clause</p> <p>15 increased the incentive of baseball teams to invest</p> <p>16 in their players as between a world without the</p> <p>17 reserve clause?</p> <p>18 A. Well, I've never thought about it. I've</p> <p>19 never studied that in that context. In some sense,</p> <p>20 yeah, that's definitely going to be true because --</p> <p>21 to the extent there was specific capital that only</p> <p>22 raised their value in one place, then other teams</p> <p>23 were not going to be willing to pay for that to the</p> <p>24 -- so no, no. In that case the -- I'd have to</p> <p>25 think it through because if it was purely specific</p>

35 (Pages 134 to 137)

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<p style="text-align: right;">138</p> <p>1 capital it would -- there's the holdup problem like 2 we would -- like we encountered in here that we 3 talked about a while ago that the -- the players 4 might be more able to collect some of the specific 5 capital investment. So maybe there was less human 6 capital investment after the end of the reserve 7 clause. I haven't studied it. 8 Q. Oh, after the end of the reserve clause 9 you believe -- well, strike that. 10 Do you believe that Major League Baseball 11 used the reserve clause as a means to prevent free 12 riding. 13 MR. ISAACSON: Objection to form, calls 14 for speculation. 15 BY THE WITNESS: 16 A. I haven't studied the reserve clause. I 17 don't know the answer to your question. I don't 18 know what you mean by "prevent free riding." There 19 was probably -- given the structure of the reserve 20 clause there was less free riding than there 21 otherwise would have been. 22 Q. Why? 23 A. Because the team owners got the returns on 24 anything specific they did. I don't know how much 25 specific they did and I haven't studied the</p>	<p style="text-align: right;">140</p> <p>1 let us say, then the resource in question, all 2 other things the same, is going to capture -- I 3 mean, you saw higher salaries in baseball after the 4 end of the reserve clause. 5 Q. Why? 6 MR. ISAACSON: Sorry. 7 BY THE WITNESS: 8 A. Because the person being paid for the -- 9 for the resource was different than it was 10 before. 11 Q. I don't under -- 12 A. Doesn't mean people are paying less for 13 the resource. So, I mean, look at it. The 14 efficiency of that market could have gone down, it 15 could have gone up. I don't know, I haven't 16 studied it, but it went up because it was a 17 transfer of property rights to the baseball 18 players. 19 Q. Baseball player compensation went up 20 because property rights were transferred from the 21 team to the players, correct? 22 A. That's what the reserve clause did. 23 Q. Is it your view that the reserve clause 24 was procompetitive? 25 A. No.</p>
<p style="text-align: right;">139</p> <p>1 performance of baseball teams before and after. 2 Q. Well, it's fair to say that since the team 3 owners controlled the rights to a player, the team 4 owners could be sure that they could obtain the 5 returns on any specific investments they make in 6 that player or more sure than without the reserve 7 clause, correct? 8 A. I guess you'd say -- I think the end of 9 your premise was more sure than without the reserve 10 clause. I remember Drysdale and Koufax held out 11 for a hundred thousand dollars back in 1967. They 12 held out together. It was bargaining, you know, 13 bargaining over their specific value to the 14 Dodgers. 15 Q. Right, but you would agree that a player 16 has more bargaining power when he has the ability 17 to sell his human capital to another team than when 18 his only choices are play for the Dodgers or don't 19 play at all, correct? 20 A. Bargaining power over -- look, over just 21 his salary? 22 Q. Yeah. 23 A. Well, if somebody else is going to pay for 24 him and if the reserve clause -- and they've got 25 total free agency, let us say, which they don't but</p>	<p style="text-align: right;">141</p> <p>1 Q. Is it your view that the reserve clause 2 was -- why wasn't it procompetitive? 3 A. Because it was permanent, and so it 4 existed -- I mean, you're asking me things about 5 the institutional features of Major League Baseball 6 that, you know, I'm not a lawyer. So they had an 7 antitrust exemption and all sorts of other things 8 that went back in time, but the contracts were in 9 effect for the entire -- the obligation was for 10 the -- for the baseball players' entire baseball -- 11 at least Major League Baseball career. We don't 12 see that in this case. 13 Q. So there's something about the permanence 14 of the restriction on mobility that will lead you 15 to believe that it's procompetitive or not 16 procompetitive? 17 MR. ISAACSON: Objection to form. 18 BY THE WITNESS: 19 A. Whether it's procompetitive or not I'm not 20 offering an opinion on because I haven't studied 21 Major League Baseball, as I said, but there's a 22 major difference between the contracts here and the 23 contracts there and that is that the contracts here 24 one becomes a free agent at the end of one's 25 contract.</p>

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<p style="text-align: right;">142</p> <p>1 Q. And by becoming a free agent -- well, so 2 is it your view that the contracts that the UFC has 3 are more procompetitive than the reserve clause 4 because the term is shorter? 5 MR. ISAACSON: Objection, misstates the 6 testimony. 7 BY THE WITNESS: 8 A. Like I said, I haven't determined how 9 noncompetitive they are. I'm telling you that 10 there's a major difference in the contracts -- when 11 I say "they are," I meant the baseball contracts. 12 There's a major difference in the contracts in that 13 here the contracts have many of the current 14 elements of Major League Baseball, so that right of 15 first refusal and all that other jazz during the 16 period, but they got rid of the reserve clause and 17 that had consequences for the earnings of baseball 18 players, but there's no -- nothing here that's 19 similar to the reserve clause. That's my point. 20 Q. Would you agree that the baseball teams 21 continued to invest in promoting players after the 22 reserve clause was eliminated? 23 A. You mean is there a positive amount? 24 Q. Yeah. 25 A. I don't know. I assume so.</p>	<p style="text-align: right;">144</p> <p>1 investments in promotion of baseball players. All 2 things equal, what would you say? 3 MR. ISAACSON: Objection to form, 4 compound, calls for speculation. 5 BY THE WITNESS: 6 A. Well, first of all, they were investing in 7 baseball players and -- in the sense of the Minor 8 Leagues and things like that that they could 9 collect the returns on. Some of that investment 10 may have been reduced. I haven't studied it. I 11 don't -- I don't know. I also don't know how much 12 investment in developing personas and stuff like 13 that went on in -- in Major League -- by teams. So 14 how much of the value of Nellie Fox was specific to 15 the White Sox. I don't know, but to the extent 16 that there was investment in -- the situation was 17 different because, you know, the American League 18 was a league of teams. And so a lot of the 19 investment inured to the league in a sense. And I 20 don't know how -- I don't know how they changed 21 their behavior. I haven't studied how much 22 promotion they did. I don't know if they came up 23 with a TV show about baseball players that piqued 24 the interest of fans in a particular -- in a 25 particular organization. I just don't know. I</p>
<p style="text-align: right;">143</p> <p>1 Q. Would it be -- do you know one way or 2 another whether baseball teams' investment in 3 baseball players went up or down after the 4 elimination of the reserve clause? 5 A. Now, that's impossibly complicated because 6 the technology of marketing sports in general 7 changed throughout the 1970s after the baseball -- 8 after reserve clauses was eliminated. You know, 9 baseball teams started televising, they started 10 televising globally, the value of franchises 11 changed so dramatically. 900 other things changed. 12 So whether they invested more in terms of total 13 dollars I don't know. 14 Q. Okay. So hold everything else equal. 15 What hypothesis would you have about the effect on 16 investment in promotion of baseball players with 17 the elimination of the reserve clause have had? 18 MR. ISAACSON: Objection to form. 19 BY THE WITNESS: 20 A. Repeat your question. 21 Q. Yeah. So I'm just trying to understand 22 your -- what your economic hypothesis would be, 23 what would your opinion be if you had to come up 24 with a hypothesis about whether the elimination of 25 the reserve clause increased or decreased the</p>	<p style="text-align: right;">145</p> <p>1 haven't studied it. 2 Q. Is it your opinion that absent the -- in a 3 world without the challenged contracts that Zuffa 4 would not have produced the Ultimate Fighter 5 television show? 6 MR. ISAACSON: Objection to form. 7 BY THE WITNESS: 8 A. Well, no. All I know is that it increased 9 the value of -- you know, I can't say for certain 10 that there would have been no TV show, but the 11 returns to that TV show would certainly have been 12 reduced. So the incentive to produce that TV show 13 would have been lessened. 14 Q. But you don't have an opinion one way or 15 the other about whether that TV show would have 16 been produced in a world absent the challenged 17 contracts, correct? 18 A. Could it have existed; is that your point? 19 Q. Yes. 20 A. Well, I think they would have done a 21 calculation that says our return on this TV show is 22 materially lower. So whether a TV show or a TV 23 show with the same amount of resources devoted to 24 it would have been -- would have been produced, it 25 wouldn't have been the same amount of resources</p>

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<p style="text-align: right;">146</p> <p>1 because they would calculate that we're less likely 2 get those returns. 3 Q. Did you, yourself in this case do that 4 computation? 5 A. I just did it as we sat here. 6 Q. But you don't in your report have any 7 computation about the expected returns of the 8 Ultimate Fighter in a world absent the challenged 9 contracts, correct? 10 A. Well, it's a general principle of 11 economics that if you -- if a firm invests in 12 something on which it can't collect the returns or 13 on which everybody else gets to collect the returns 14 it's less likely to occur. So, you know, we 15 farmers don't advertise, that sort of thing. 16 Q. Why don't we farmers advertise? 17 A. Because if I advertise -- if I spend a lot 18 of money advertising the benefits of eating wheat, 19 the benefits inure to all the other wheat farmers 20 and only a very small portion to me. So producing 21 the Ultimate Fighter was -- you know, had a 22 combination of specific value to -- to UFC, but it 23 also had an effect on the value -- value of other 24 promoters. 25 Q. So there -- there are two different</p>	<p style="text-align: right;">148</p> <p>1 returns to that investment resulting from the part 2 of the investment that enhanced the value of the 3 UFC brand versus the -- versus the part of that 4 investment would enhance MMA generally; is that 5 fair? 6 MR. ISAACSON: Objection to form. 7 BY THE WITNESS: 8 A. Whether they did a formal calculation of 9 here's what the spill-over effect is I don't know. 10 I'm telling you a general principle that when you 11 can't collect the returns on your investment you're 12 less likely to do it. 13 Q. It's fair to say that in this case you did 14 not do any such spill-over computation, correct? 15 A. Well, what we see is that -- I mean, you 16 can look at the charts, that after the Ultimate 17 Fighter revenues per event went way up. And so -- 18 for Zuffa events. So some of that was decidedly 19 specific, in my opinion. 20 Q. And that means that it's possible that in 21 the but-for world absent the challenged contracts 22 Zuffa might have made some investments in the 23 Ultimate Fighter, correct? 24 A. Well, some, yeah. 25 Q. And you haven't computed the amount of</p>
<p style="text-align: right;">147</p> <p>1 effects that investment of the Ultimate Fighter 2 had. One was to enhance the value of the UFC brand 3 and one was to enhance the value of the fighters 4 who could then walk without the challenged 5 contracts; is that fair? 6 A. I don't know what you -- what fighters? 7 It enhanced the market for all fighters. It 8 doesn't have particularly -- 9 Q. I understand. 10 A. It might have had a different impact on 11 Zuffa fighters than for Strike Force fighters or 12 something, but it was a -- to the extent that -- 13 you pointed to two effects, you said it affected 14 MMA and it affected Zuffa. And the MMA part -- or 15 it affected Zuffa fighters and MMA fighters in 16 general and the MMA part in general helped the 17 Zuffa fighters and it helped the whoever 18 fighters. 19 Q. And your opinion -- 20 A. And the promoters. 21 Q. Right. And your opinion is that in a 22 world without the challenged contracts in order to 23 determine whether Zuffa would have invested in the 24 ultimate fighter television show they would have 25 had to do some kind of computation about the</p>	<p style="text-align: right;">149</p> <p>1 diminished investments in the Ultimate Fighter that 2 Zuffa would have done absent the challenged 3 contracts, correct? 4 A. Beyond saying the returns are affected in 5 the way I indicated and that it's likely to be 6 less, no. 7 Q. You do not quantify the total amount of 8 dollars that the UFC spends on promoting fighters 9 anywhere in your report, correct? 10 A. No, I don't think I do. 11 Q. And you don't quantify the total amount of 12 dollars that the UFC spends per fighter in any 13 particular year on promotions, correct, in your 14 report? 15 A. No, not in my report. 16 Q. And you don't, in fact, quantify the 17 amount that the UFC spends on promoting any fighter 18 at all in your report, correct? 19 A. Well, it would be difficult to do so. So 20 in the extent -- to the extent that promoting means 21 matching and all those other things, I don't know 22 how I would match that to any particular fighter. 23 So they're making strategic decisions with regard 24 to the assets with whom they have contracts and 25 those are costly things to do.</p>

38 (Pages 146 to 149)

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<p style="text-align: right;">150</p> <p>1 Q. You don't in your report quantify the 2 total amount of promotional investment in athletes 3 that you believe would be lost if the challenged 4 contractual provisions were eliminated, do you? 5 A. You mean do I have a dollar amount on it? 6 Q. Correct. 7 A. We didn't put a dollar amount, no. 8 Q. You don't quantify in your report the 9 total amount of promotion dollars that the UFC 10 invested in its brand during the class period, do 11 you? 12 A. Not in my report, no. 13 Q. And you don't quantify the total amount of 14 promotion dollars that the UFC invested in 15 promoting its fighters separate and apart from 16 promoting its brand in your report, correct? 17 A. I'm confused by your question. Are you 18 asking whether I have a number? 19 Q. Correct. 20 A. For the amount of promotional resources 21 devoted to augmenting the -- the reputations of 22 fighters as -- as Zuffa fighters? 23 Q. During the class period. 24 A. I don't have that number. 25 Q. And you don't quantify the total amount of</p>	<p style="text-align: right;">152</p> <p>1 Zuffa can't do it but Bellator can and everybody 2 else can, or is it that in general you want to have 3 a rule for the entire MMA market that nobody can 4 have these kinds of contract restrictions, that 5 nobody can write contracts like this? And 6 that's -- that's important. That's the point I've 7 been making before lunch too, that's important. 8 Q. I understand you think it's important. 9 And I'm trying to understand what assumption you 10 made about the but-for world in your report. Which 11 one of those did you assume, if either? 12 MR. ISAACSON: Objection, asked and 13 answered. 14 MR. CRAMER: I don't think I got an 15 answer. 16 MR. ISAACSON: Yeah, you did. 17 BY THE WITNESS: 18 A. I've given you my answer with regard to 19 both of those worlds which seem to be the two that 20 you might specify as the way -- you have a view, I 21 think, of how the industry ought to be organized 22 that's different than the way it's organized, and I 23 can't give you a completely specific answer to that 24 question without knowing what that view is. So if 25 you tell me that in the but-for world all other MMA</p>
<p style="text-align: right;">151</p> <p>1 investments in fighters that would have been 2 foregone in the but-for world, correct, a number? 3 A. What's the but-for world? 4 Q. Absent the challenged contracts and 5 challenged conduct. 6 A. Okay. We're going in circles again. So 7 is the but-for -- you need to define the but-for 8 world. And is it that Zuffa can't do this and 9 every- -- these things and everybody else can or 10 that nobody can do this? And I think the only 11 thing you're arguing here is that the but-for world 12 is that only Zuffa can't do it; is that correct? 13 Q. I'm asking about your report. What did 14 you assume about the but-for world in your report? 15 Which of those two scenarios did you assume? 16 A. I assumed that either one of them could be 17 the but-for world that you're talking about because 18 it's not my job to determine what the but-for world 19 is. What is it that -- you've brought this case 20 and I understand your arguments. What is it that 21 you see as the but-for world? Is it that these 22 contracts, call them contract restrictions, the 23 challenged conduct, are they challenged conduct for 24 Zuffa so that only -- so that if these things are 25 found to have had the impact that you claim that</p>	<p style="text-align: right;">153</p> <p>1 promoters get to use these contract restrictions, 2 that's one but-for world. Or you might say in the 3 but-for world no MMA promoters get to use these 4 contract restrictions. The -- the implications for 5 the industry, for Zuffa, for Bellator, for fighters 6 are all different in those two but-for worlds. 7 Q. And it's fair to say that you didn't 8 quantify the amount of promotion dollars that would 9 have been foregone in either of those but-for 10 worlds in your report, correct? 11 A. I've given you the analysis that says if 12 you can't collect the returns, you're not going to 13 invest. So the -- there would have been more 14 promotional dollars in a world -- by Bellator in a 15 world where Bellator got to use those contracts and 16 Zuffa didn't than in a world where nobody gets to 17 use the contracts. 18 Q. Can you show me a table in your report 19 where you quantify the amount of additional 20 promotional dollars that -- I'm sorry -- the amount 21 of promotional dollars that would be lost in either 22 of those two but-for worlds? Is there a table in 23 your report where I can find that? 24 A. No. That's not part of my analysis or 25 part of my opinions.</p>

39 (Pages 150 to 153)

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<p style="text-align: right;">154</p> <p>1 Q. Did you evaluate whether in the but-for 2 world, in either of the two but-for worlds if MMA 3 promoters reduce the amount they spent on promoting 4 fighters that fighters or their management would 5 spend more on promoting themselves? 6 A. So did I analyze substitution; is that 7 what you're talking about? 8 Q. Yes. Did you? 9 A. Well, the -- the promotional activities 10 of -- you'll have to explain what you mean by 11 promoting themselves. So would an individual 12 fighter and his manager hire an advertising agency 13 or -- or something like that or develop their own 14 TV show; is that what you have in mind? 15 Q. Are you aware that individual MMA fighters 16 do spend money on promoting themselves through 17 social media and otherwise? 18 I understand that, but how much they 19 spend -- you know, I've not studied how much 20 they've spent, but are you asking me whether there 21 would be their own TV shows and things like that? 22 They would not invest in things that were specific 23 to the value of a particular promoter. They would 24 invest in things that just had to do with their 25 persona generally and to the extent that promoters</p>	<p style="text-align: right;">156</p> <p>1 comparative advantage of -- in investing is 2 determined by the way the market works, and the 3 evidence is, as I said a minute ago, that the 4 nature of these contracts that are used by all the 5 major promoters is that the comparative advantage 6 in investing resides disproportionately on the 7 promoter's side because of all the things they do 8 to promote interest in matches and athletes. 9 Q. What I hear you saying is that a fighter 10 doesn't have an interest in promoting a promoter -- 11 or advertising a promoter. My question is whether 12 a fighter has more of an interest in promoting and 13 advertising himself in his own image than a 14 promoter would have in investing in a fighter's 15 image, all things equal? 16 A. Forgive me for putting it this way, asked 17 and answered. I -- I -- 18 Q. I don't think I got an answer. 19 A. Well, you did. 20 Q. Is it -- all right. Is it fair to say 21 that you don't in your report evaluate the question 22 about whether in the but-for world where fighters 23 are -- strike that. 24 You understand that Plaintiffs' experts 25 claim that in the but-for world during the class</p>
<p style="text-align: right;">155</p> <p>1 have a comparative advantage in developing those 2 things, because, after all, the individual fighters 3 don't control with whom they fight, they don't 4 control the sequencing of the -- they don't 5 internalize all those things, which is why they 6 have multi-bout contracts with the promoters. So 7 that how much would occur depends on who has a 8 comparative advantage in producing that type of 9 capital, in making those investments, and the 10 evidence in this market is that promoters -- I'm 11 not just saying Zuffa, I'm saying promoters have a 12 comparative advantage in making those types of 13 investments. 14 Q. And -- 15 A. And that's why the contracts look like 16 what they do. 17 Q. And you would agree that the fighters have 18 a comparative advantage in promoting their own 19 image to the public, correct? 20 A. You know, you can't even say that. It's 21 that if they promoted their own image to the 22 public, they would -- they are way less likely to 23 invest in aspects of that image that inure to 24 Bellator or to Pride or something like that. 25 Pride's out of business. One. So who's got the</p>	<p style="text-align: right;">157</p> <p>1 period fighters as a whole would be paid more than 2 a billion dollars more than they actually were paid 3 by UFC or MMA promoters generally? 4 A. I've seen that estimate. 5 Q. Okay. Did you evaluate in your report 6 whether as a result of that additional compensation 7 fighters would themselves invest more money than 8 they currently invest in their own images and 9 identities? Is that in your report anywhere? 10 A. You mean if they had a billion dollars 11 between them or 1.6 billion I think is the upper 12 end of what Dr. Singer claims would they invest 13 more in their images? 14 Q. Yes. 15 A. Maybe they would, maybe they wouldn't, but 16 it's not something that was part of my analysis. 17 Q. Okay. It's fair to say that it's also not 18 part of your analysis to compute the total amount 19 of output of MMA events that might have flown from 20 any foregone promotional dollars, right? Let me 21 ask -- let me -- strike that. Let me ask it 22 another way. 23 Do you in your report in any place compute 24 the reduced revenues to MMA events that would have 25 occurred in either of the but-for worlds that you</p>

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<p style="text-align: right;">158</p> <p>1 discussed a moment ago?</p> <p>2 A. Well, I mean, I couldn't because you never</p> <p>3 told me what the but-for world is.</p> <p>4 Q. And if you couldn't, you didn't, right?</p> <p>5 You did not compute the lost output --</p> <p>6 A. Well, if you don't tell me what the</p> <p>7 but-for world is, then -- then I don't know what</p> <p>8 the but-for world is, do I?</p> <p>9 Q. So it's fair to say that in doing your</p> <p>10 report you didn't know what the but-for world was,</p> <p>11 correct?</p> <p>12 A. I only know that Dr. Singer specifies a</p> <p>13 but-for world where his misbegotten foreclosure</p> <p>14 share would have been 30 percent rather than what</p> <p>15 it is, but behind that he never says what the</p> <p>16 but-for world would be. He never explains how that</p> <p>17 share would come to be what it is and which parts</p> <p>18 of the contract restrictions would lead to it being</p> <p>19 30 percent rather than what it is. So, you know,</p> <p>20 one of the weaknesses of Dr. Singer's report is he</p> <p>21 never says -- he gives all this opinion about what</p> <p>22 competition would do, but he doesn't tell us what</p> <p>23 competition would look like.</p> <p>24 Q. You don't compute in your report the</p> <p>25 amount of revenues from MMA events that would be</p>	<p style="text-align: right;">160</p> <p>1 of the myriad ways that Dr. Singer's foreclosure</p> <p>2 share, as he calls it, could have gotten from what</p> <p>3 it is to 30 percent and the different ways that</p> <p>4 could happen have implications. So there's -- and</p> <p>5 I don't know how many different ones there are. So</p> <p>6 I just don't know what the market -- I need some</p> <p>7 guidance from the Plaintiffs to say this is what we</p> <p>8 think the world's going to look like and you just</p> <p>9 haven't said. You just haven't said it's not</p> <p>10 that.</p> <p>11 Q. And it's fair to say that given that you</p> <p>12 didn't compute the amount of loss revenues in any</p> <p>13 potential but-for world, you didn't compute the</p> <p>14 amount of what you believe would be lost</p> <p>15 compensation to MMA fighters in the but-for world;</p> <p>16 am I correct about that?</p> <p>17 MR. ISAACSON: Objection to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I don't even know if it's going to be lost</p> <p>20 compensation in some but-for world. There's no</p> <p>21 evidence that -- in this record that the earnings</p> <p>22 of MMA fighters have been adversely affected in any</p> <p>23 way by the challenged conduct.</p> <p>24 Q. My question is you have said that in the</p> <p>25 but-for world that directionally MMA revenues would</p>
<p style="text-align: right;">159</p> <p>1 lost in either of the but-for worlds that you</p> <p>2 believe might be relevant in this case, correct?</p> <p>3 A. Well, I don't know if those are the only</p> <p>4 two --</p> <p>5 MR. ISAACSON: Objection, asked and</p> <p>6 answered.</p> <p>7 BY THE WITNESS:</p> <p>8 A. -- but-for worlds.</p> <p>9 THE REPORTER: I'm sorry.</p> <p>10 THE WITNESS: I'm sorry. We spoke --</p> <p>11 MR. ISAACSON: Objection, asked and</p> <p>12 answered.</p> <p>13 BY MR. CRAMER:</p> <p>14 Q. Let me ask it this way. You don't compute</p> <p>15 the amount of MMA revenues that would be lost in</p> <p>16 any possible but-for world in your report in this</p> <p>17 case, correct?</p> <p>18 A. As I said, without knowing what you think</p> <p>19 the but-for world should be, it's impossible for me</p> <p>20 to understand or for anybody to understand the</p> <p>21 market structure and the market -- the way this</p> <p>22 market would -- would play out. I can give you</p> <p>23 directions of magnitudes, I can say what incentives</p> <p>24 would look like if there was -- if there were no</p> <p>25 contracts whatsoever, but, you know, you can think</p>	<p style="text-align: right;">161</p> <p>1 be lower, correct?</p> <p>2 A. Directionally? Which but-for world? I</p> <p>3 mean, if you said, look it, the but-for world is</p> <p>4 one where the only thing we're going to do is, I</p> <p>5 don't know, make the right of first refusal two and</p> <p>6 a half months -- excuse me -- the exclusive</p> <p>7 negotiation period two and a half months instead of</p> <p>8 three months, that's one thing. If you're going to</p> <p>9 say I'm going to get rid of them all for Zuffa,</p> <p>10 that's another thing. If I'm going to get rid of</p> <p>11 them all for everybody, that's another thing. Am I</p> <p>12 going to take different combinations of the</p> <p>13 contract restrictions and say they're okay, but</p> <p>14 those aren't okay, you've got to tell me. So</p> <p>15 directionally if you got rid of some of these the</p> <p>16 returns on investment by promoters are lower.</p> <p>17 That's what I can tell you and that's what -- and</p> <p>18 that's what the promoters have in mind that, you</p> <p>19 know, we want to invest in these things, we've got</p> <p>20 to make sure that we get our returns.</p> <p>21 Q. All right. I understand, you've made the</p> <p>22 point repeatedly that you don't understand what</p> <p>23 Plaintiffs are saying the but-for world would have</p> <p>24 looked like. I'm just asking whether in your</p> <p>25 report you quantified certain things. So would you</p>

41 (Pages 158 to 161)

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<p style="text-align: right;">234</p> <p>1 Q. Yes.</p> <p>2 A. Depends on what I relied on it for. So</p> <p>3 you said footnote 34? That's the Singer report.</p> <p>4 Q. Footnote 84.</p> <p>5 A. Oh. I have to remember what I relied on</p> <p>6 here. 84.</p> <p>7 Q. You relied on page 14 of the document.</p> <p>8 A. Hold on. Okay. Where's 84? Okay. So</p> <p>9 footnote 84 merely refers to the fact that</p> <p>10 Mr. White was thought to be part of the talent they</p> <p>11 acquired in the sale of the company. And I haven't</p> <p>12 looked at this in ages. I assume that statement is</p> <p>13 in there somewhere. What was the other one?</p> <p>14 Q. Footnote 365 on page 108.</p> <p>15 A. I've got to look at what we said that</p> <p>16 refers to.</p> <p>17 (Witness reviewing document.)</p> <p>18 BY THE WITNESS:</p> <p>19 A. Okay. That refers to residential buys.</p> <p>20 Q. So you rely in your report in two</p> <p>21 occasions on information that's in this memo,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know who prepared this memo?</p> <p>25 A. Was this Deutsche Bank? I can't remember.</p>	<p style="text-align: right;">236</p> <p>1 A. They calculated this and they thought the</p> <p>2 information was relevant.</p> <p>3 Q. Look at the bottom of the chart on the</p> <p>4 right -- sorry -- the bottom of the chart to the</p> <p>5 right of the summary entitled "UFC fighter costs";</p> <p>6 do you see that?</p> <p>7 A. No.</p> <p>8 Q. There's a chart on the right that's</p> <p>9 entitled "UFC fighter costs." It's a bar graph.</p> <p>10 A. I thought you meant bottom right. Sorry.</p> <p>11 Q. I'm sorry. Top right.</p> <p>12 A. Yeah.</p> <p>13 Q. And it charts fighter compensation as a</p> <p>14 percentage of revenue, correct?</p> <p>15 A. No. It has -- it lists it at the</p> <p>16 bottom.</p> <p>17 Q. It lists fighter compensation as a</p> <p>18 percentage of revenue, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Please turn to the table on the</p> <p>21 bottom-right corner of that page entitled "League</p> <p>22 comps"; do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. What this chart is doing is comparing the</p> <p>25 percentage of revenue that Zuffa pays its athletes</p>
<p style="text-align: right;">235</p> <p>1 Q. Do you know whether WME used this document</p> <p>2 in the course of their evaluating whether to</p> <p>3 purchase Zuffa?</p> <p>4 A. I believe they did, but I don't recall the</p> <p>5 specifics.</p> <p>6 Q. All right. Turn to page 11 of this</p> <p>7 document, please. Page 11 is a page that's</p> <p>8 entitled "Risk of fighter compensation inflation";</p> <p>9 do you see that? Do you see the title?</p> <p>10 A. Yes, I see that.</p> <p>11 Q. Look at the first bullet point on the</p> <p>12 left. It says historically fighters have earned</p> <p>13 between 16 to 19 percent of revenues, although 2016</p> <p>14 is projected by the UFC at 22.7 percent largely</p> <p>15 driven by one-time Brock cost and overly stacked</p> <p>16 UFC 200"; do you see that?</p> <p>17 A. Yes, but I can't remember what one-time</p> <p>18 Brock cost is.</p> <p>19 Q. Brock Lesnar?</p> <p>20 A. Okay. And I don't know what "stacked"</p> <p>21 means, but that's okay.</p> <p>22 Q. Okay. Do you -- is it fair to say that in</p> <p>23 the course of its business Zuffa or its parent</p> <p>24 analyzed fighter compensation in terms of fighter</p> <p>25 share of revenue?</p>	<p style="text-align: right;">237</p> <p>1 to the percentage of revenue that other sports</p> <p>2 leagues pay their athletes, correct?</p> <p>3 MR. ISAACSON: Objection, no foundation.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Could you read the full question back,</p> <p>6 please.</p> <p>7 Q. Yes. Well, why don't I ask it this way.</p> <p>8 What is the chart on the bottom right depicting?</p> <p>9 A. Various -- some of them are a little odd,</p> <p>10 but it's various calculations about labor -- what</p> <p>11 people earn as a -- you know, on a per-minute basis</p> <p>12 as a fraction of the total revenue of the league,</p> <p>13 how much the top players make as a fraction of</p> <p>14 revenue, whatever that means. So that's what it</p> <p>15 is.</p> <p>16 Q. Okay. Why do you think WME and/or Zuffa</p> <p>17 used a wage share comparison in a document</p> <p>18 assessing the potential value of Zuffa as an</p> <p>19 investment?</p> <p>20 A. Maybe because the -- it's a relevant</p> <p>21 calculation for knowing the value of the</p> <p>22 organization, I assume.</p> <p>23 Q. Turn to the bottom left. There's a chart</p> <p>24 entitled "Bouts remaining"; do you see that?</p> <p>25 A. Yes.</p>

60 (Pages 234 to 237)

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<p style="text-align: right;">238</p> <p>1 Q. And in the left-hand column there's a 2 chart entitled "Ranking," right? Correct? 3 A. Yes. 4 Q. And in the right-hand column there's a 5 chart -- there's a column entitled "Average 6 remaining bouts," correct? 7 A. Correct. 8 Q. And what this shows is that the average 9 remaining bouts on a champion's contract is 6.5, 10 correct? 11 A. That's what it says. 12 Q. And the average remaining bouts on 13 fighters ranked 1 to 5 is 5.5, correct? 14 A. Correct. 15 Q. And the average remaining bouts on fighter 16 contracts ranked 6 to 10 is 3.6, right? 17 A. Yes. 18 Q. And the average remaining bouts on fighter 19 contracts ranked 11 to 15 is 3.2, correct? 20 A. Yes. 21 Q. So it's fair to say that as the ranking 22 goes from low to high, the average remaining bouts 23 falls, correct? Or let me ask it this way. It's 24 fair to say -- 25 A. We're not on the same page about low to</p>	<p style="text-align: right;">240</p> <p>1 don't, then on average the guys ranked 11 to 15 2 have 3.2 bouts left. So this doesn't surprise 3 me. 4 Q. Okay. 5 Is there a logical connection between the 6 degree to which Zuffa has its top fighters signed 7 to long-term deals and Zuffa's ability to maintain 8 its fighter wage share at or below current levels? 9 A. Not that I know of. 10 Q. Why is it on this chart, then? I mean, 11 this chart is entitled "Risk of fighter 12 compensation inflation." What's the relationship 13 between the amount of bouts left on fighter 14 contracts and the risk of fighter compensation 15 inflation? 16 A. Well, I don't know the full context of 17 this document, but one would expect that, you know, 18 they've been successful in -- in getting their 19 champions to reup. These are the guys who make 20 millions, for example, and one would expect this 21 pattern from the fact that for champions it's 22 turned out to be a good marriage; and so expected 23 remaining duration of the relationship in a 24 contract is -- is higher. So that's what this 25 is -- is saying. By the same token, I don't know</p>
<p style="text-align: right;">239</p> <p>1 high -- 2 Q. Yes. 3 A. -- but I know what you're saying. 4 Q. It's fair to say that the better ranked an 5 athlete is the more likely that athlete has longer 6 bouts remaining on their contract with Zuffa, 7 correct? 8 A. The average remaining bouts of champions 9 is higher than the average remaining bouts of 10 fighters in other ranking intervals. That's what 11 the chart shows. 12 Q. And that's consistent with your 13 understanding of UFC contracts generally, right? 14 A. When you say "generally," I don't know if 15 it's true in all cases. 16 Q. Just -- 17 A. I have no reason to believe that this 18 calculation is inaccurate. 19 Q. In other words, the better ranked a 20 fighter is the -- all things equal, the longer the 21 contract -- the bout requirement in the Zuffa 22 contract; is that fair? 23 A. No. It says remaining bouts. So if 24 champions reup early and extend their contracts, 25 then -- and the guys that are ranked 11 to 15</p>	<p style="text-align: right;">241</p> <p>1 what cost per minute or compensation per minute has 2 to do with the risk of inflation. These things are 3 relevant things that WME would be looking at. 4 Q. So one thing that WME would want to know 5 before it invests \$4 billion in Zuffa is that Zuffa 6 has its top-ranked fighters under long-term 7 exclusive contracts, right? 8 A. Yeah. You want to know you're not going 9 to lose them in the short run. 10 Q. Why is that? Why would you want to know 11 that? 12 A. Because that's the human capital that's 13 going to produce revenue for you over the short run 14 and the champions are more valuable than the guys 15 ranked 11 to 15. And if we went down to the people 16 ranked 50, they'd be less valuable still. 17 Q. And we're not just talking about champions 18 here, right? Fighters ranked 1 to 5 have more 19 bouts left than fighters ranked 6 to 10, correct? 20 A. Yes. That's exactly what you'd expect to 21 see. 22 Q. All right. Turn to page 4, internal 23 page 4 of this document, please. There's a bullet 24 point -- 25 A. Page 4?</p>

61 (Pages 238 to 241)

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<p style="text-align: right;">242</p> <p>1 Q. Page 4. The pen ultimate bullet point is 2 "Live events"; do you see that? The second to last 3 bullet point on the page. 4 A. Sorry. 5 Q. Do you see that? 6 A. Yes. 7 Q. The last sentence under that bullet point 8 says "Like Pay-Per-View expect some volatility with 9 fight card quality"; do you see that? 10 A. Yes. 11 Q. Is it fair to say that because all things 12 equal the higher the quality of the fighter the 13 more revenue the fight will bring in? 14 A. Are you saying it has something to do with 15 that sentence? 16 Q. Well, why would revenue from live events 17 experience volatility with fight card quality? 18 A. I assume that if quality is volatile then 19 revenues from the events could be volatile. 20 Q. Why? 21 A. Because people like to watch quality 22 fighters. 23 Q. All things equal, the higher quality 24 fighter the more revenues an event is likely to 25 generate for Zuffa, correct?</p>	<p style="text-align: right;">244</p> <p>1 You recall seeing this document. 2 A. You know, I recall seeing a lot of 3 documents and I recall documents like this. I'm 4 looking at a page here with check marks and X's and 5 things and I recall seeing something like that. 6 And I recall some of these photos. Whether this is 7 the exact document I'm recalling, I can't -- I 8 can't say. 9 Q. Turn to page 3 of the document. There's a 10 title "Notice and undertaking by recipients." 11 A. Page 3. 12 Q. It says "This presentation has been 13 prepared by Zuffa, LLC for the exclusive use of the 14 party to whom the company delivers this 15 presentation. Although the company believes the 16 information is accurate in all material 17 respects..." Do you see that? 18 A. Yes. 19 Q. So Zuffa prepared this document and Zuffa 20 believed or at least represented in the document 21 that the information was accurate; is that fair? 22 MR. ISAACSON: You're misstating the 23 document because you just said the opposite of what 24 that says in the next sentence. 25 BY MR. CRAMER:</p>
<p style="text-align: right;">243</p> <p>1 A. That sounds right. 2 Q. All right. You can put that document 3 aside. 4 MR. CRAMER: I'd like to mark as the next 5 document Topel Exhibit -- 6 THE REPORTER: 7. 7 MR. CRAMER: -- 7. Thank you. 8 (Topel Exhibit 7 was marked as 9 requested.) 10 BY MR. CRAMER: 11 Q. Topel Exhibit 7 is a document entitled 12 "UFC Company Overview." It bears the Bates range 13 ZFL-2677898 through 7967, and I will represent to 14 you that you listed this document on your materials 15 relied upon. 16 A. Okay. 17 Q. Do you recall sitting here today what in 18 this document you relied upon? 19 A. No. 20 MR. ISAACSON: He'd have to go through it 21 page by page to answer that. 22 BY MR. CRAMER: 23 Q. All right. You don't need to do that. 24 That's fine. If you can't -- if you don't remember 25 just looking at it, that's fine.</p>	<p style="text-align: right;">245</p> <p>1 Q. I'll read the whole sentence. "Although 2 the company believes the information is accurate in 3 all material respects, the company does not make 4 any representation or warranty either express or 5 implied as to the accuracy, completeness, or 6 reliability of the information contained in this 7 presentation"; do you see that? 8 A. Yes. 9 Q. It's fair to say that Zuffa said in the 10 document that it believed the information to be 11 accurate in all material respects, correct? 12 A. Well, it believed, but it also said, you 13 know, we're not warranting the reliability of this 14 information. 15 Q. But it believed it to be accurate and you 16 relied upon it in this case, correct? 17 A. It's in my -- the list of things relied 18 upon and I would have to look through the whole 19 thing and search through my memory to find out how 20 we relied upon it. 21 Q. Turn to the last paragraph on this page. 22 A. Okay. 23 Q. The second sentence says "The recipient 24 acknowledges that the company considers this 25 presentation and all information contained herein</p>

62 (Pages 242 to 245)

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<p style="text-align: right;">246</p> <p>1 to include confidential, sensitive, and proprietary</p> <p>2 information"; do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Turn to page 59 of the document, please.</p> <p>5 It's fair to say that on page 59 Zuffa uses wage</p> <p>6 share, among other metrics, to evaluate fighter</p> <p>7 compensation, correct?</p> <p>8 A. Well, I don't know what you mean by</p> <p>9 "evaluate fighter compensation."</p> <p>10 Q. Zuffa's using wage share in this -- on</p> <p>11 this page, correct?</p> <p>12 A. Well, it's in there. It's also got all</p> <p>13 the other expenses they use.</p> <p>14 Q. So it has a number of different expenses,</p> <p>15 athlete's production, marketing, and other COS</p> <p>16 expense?</p> <p>17 A. Yeah. It's got marketing in there. This</p> <p>18 is all in black and white. I can't tell who's who.</p> <p>19 I assume -- maybe they go up. So it's athletes,</p> <p>20 production, marketing, other cost of sales. Yeah.</p> <p>21 Okay.</p> <p>22 Q. All right. Look to the left-hand side in</p> <p>23 the first bullet under "Costs of sales drivers."</p> <p>24 The first bullet says "Athletes"; do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">248</p> <p>1 A. On this page?</p> <p>2 Q. Yes.</p> <p>3 A. Why would you? All right. I just --</p> <p>4 I'm -- I'm mystified by your question. I'm sorry.</p> <p>5 Q. Okay. It's fair to say that you don't</p> <p>6 mention this document's -- this -- strike that.</p> <p>7 Withdraw the question. You can put it aside.</p> <p>8 MR. CRAMER: I'm going to mark the next</p> <p>9 document as Topel Exhibit 8.</p> <p>10 (Topel Exhibit 8 was marked as</p> <p>11 requested.)</p> <p>12 BY MR. CRAMER:</p> <p>13 Q. Exhibit 8 bears the Bates range</p> <p>14 ZFL-1484034 through 4037, and the first page of the</p> <p>15 document is an E -- a series of e-mails between</p> <p>16 John Mulkey and Steven Tecci and they're all in</p> <p>17 August of 2013 and then there's some attachments.</p> <p>18 Have you seen this document before?</p> <p>19 A. I've seen charts like this. I don't</p> <p>20 remember if it was this document. I'm sure if I</p> <p>21 cited it you're about to tell me.</p> <p>22 Q. As far as I know, you didn't cite it.</p> <p>23 A. Okay. I mean, you see a lot of charts in</p> <p>24 a case like this. I could have seen this.</p> <p>25 Q. Do you know who John Mulkey is?</p>
<p style="text-align: right;">247</p> <p>1 Q. And the second sentence begins "With the</p> <p>2 increase in content revenue in 2019 conservatively</p> <p>3 projecting a step change in fighter compensation in</p> <p>4 line with the revenue increase"; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is it fair to say what Zuffa is projecting</p> <p>7 here is that fighter compensation will increase in</p> <p>8 relation to the projected revenue increase; is that</p> <p>9 right?</p> <p>10 A. Well, subject to me saying I don't know</p> <p>11 what they mean by "a step change in fighter</p> <p>12 compensation in line with." I don't know if that's</p> <p>13 the same rate as, what the same sign as, but in any</p> <p>14 case, this -- this metric here is not the same as</p> <p>15 what Dr. Singer uses.</p> <p>16 Q. In making this projection that fighter</p> <p>17 compensation would increase in line with the</p> <p>18 increase in Zuffa's content revenues in 2019, is</p> <p>19 there any evidence from this document that Zuffa</p> <p>20 looked to the wages paid by other MMA promotions?</p> <p>21 MR. ISAACSON: You want him to go through</p> <p>22 each page of this and --</p> <p>23 MR. CRAMER: Just on this page do you</p> <p>24 see --</p> <p>25 BY THE WITNESS:</p>	<p style="text-align: right;">249</p> <p>1 A. I don't recall.</p> <p>2 Q. Does it jog your recollection if I tell</p> <p>3 you that Mr. Mulkey is the -- or was the CFO of</p> <p>4 Zuffa?</p> <p>5 A. How about if I just take your word for it?</p> <p>6 Q. Okay.</p> <p>7 Turn to the first page, the first</p> <p>8 attachment, page 1484035, and look to the bottom of</p> <p>9 the page.</p> <p>10 A. Yes.</p> <p>11 Q. There's a chart entitled "Fighter comp as</p> <p>12 a percentage of UFC event revenues"; do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Did you refer to this document or this</p> <p>16 page in your report?</p> <p>17 A. I could have. I mean, I remember seeing a</p> <p>18 chart that's got those zeros down there, but I</p> <p>19 don't recall the context in which I would have</p> <p>20 referred to it.</p> <p>21 Q. Is it fair to say that Zuffa kept track</p> <p>22 internally of fighter compensation as a percentage</p> <p>23 of event revenue?</p> <p>24 A. Evidently.</p> <p>25 Q. And by Mr. Mulkey's account here fighter</p>

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<p style="text-align: right;">250</p> <p>1 share of revenues fell from 2007 to 2008, right?</p> <p>2 A. Well, yeah. You're choosing the -- from</p> <p>3 the high that it ever achieved in 2007 it fell.</p> <p>4 Q. And then it rose slightly from 2008 to</p> <p>5 2010, right?</p> <p>6 A. Yes.</p> <p>7 MR. ISAACSON: Objection to form.</p> <p>8 BY MR. CRAMER:</p> <p>9 Q. And then it fell --</p> <p>10 A. No. Yes. Yes. Yes. Okay.</p> <p>11 Q. And then from 2010 through 2013 -- put it</p> <p>12 this way, fighter share of revenue is lower in 2013</p> <p>13 or projected to be lower in 2013 than it was in</p> <p>14 2010, correct?</p> <p>15 MR. ISAACSON: Objection to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Than it was in 2010.</p> <p>18 MR. ISAACSON: And then foundation.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Okay. Yeah. You're talking about 2 --</p> <p>21 2 percent there, yeah. That's right.</p> <p>22 Q. So fighter share of revenue on</p> <p>23 Mr. Mulkey's account was 22 percent in 2010; am I</p> <p>24 right?</p> <p>25 A. That's what he calculated.</p>	<p style="text-align: right;">252</p> <p>1 Q. On this chart that we have that was</p> <p>2 attached to Mr. Mulkey's series of e-mails,</p> <p>3 Mr. Mulkey or whoever created this chart shows that</p> <p>4 fighter compensation as a percentage of UFC event</p> <p>5 revenues fell from 25.85 percent in 2007 to</p> <p>6 20.48 percent in 2008, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And do you -- are you aware of events</p> <p>9 significant to this case that occurred between 2006</p> <p>10 and 2007?</p> <p>11 A. I probably am, but as I sit here today --</p> <p>12 as I sit here now, I can't remember which events</p> <p>13 occurred when.</p> <p>14 Q. Are you aware that between 2006 and 2007</p> <p>15 Zuffa purchased WEC, WFA, and Pride?</p> <p>16 A. Yes.</p> <p>17 Q. All right. You can put that document</p> <p>18 aside.</p> <p>19 A. By the way, then, revenues constant,</p> <p>20 bringing in those lower paid athletes would have</p> <p>21 caused the average to go down because you bought</p> <p>22 the contracts.</p> <p>23 Q. Did you -- strike that.</p> <p>24 Is it your understanding that revenues</p> <p>25 were constant between 2006 and 2007?</p>
<p style="text-align: right;">251</p> <p>1 Q. And then in 2011 it was 18.45 percent; is</p> <p>2 that right?</p> <p>3 A. That's what the number says.</p> <p>4 Q. Do you know what happened in 2010, any</p> <p>5 significant event in this case?</p> <p>6 A. This is when they got Strike Force I</p> <p>7 think.</p> <p>8 Q. Strike Force was purchased in 2010 --</p> <p>9 A. Yes.</p> <p>10 Q. -- correct?</p> <p>11 A. Yes.</p> <p>12 Q. And we just talked about the decrease in</p> <p>13 fighter share of revenue between 2007 and 2008.</p> <p>14 That decrease was from 25.85 percent to</p> <p>15 20.48 percent on Mr. Mulkey's account, correct?</p> <p>16 MR. ISAACSON: You keep saying revenue.</p> <p>17 You're looking at the event revenue chart?</p> <p>18 MR. CRAMER: Event revenue. Thank you. I</p> <p>19 mean of event revenue.</p> <p>20 MR. ISAACSON: Okay. And you keep saying</p> <p>21 it's Mr. Mulkey's chart. I mean, he's on the</p> <p>22 e-mail. I don't think it's been established this</p> <p>23 is Mr. Mulkey's chart.</p> <p>24 MR. CRAMER: Fair enough.</p> <p>25 BY MR. CRAMER:</p>	<p style="text-align: right;">253</p> <p>1 A. Well, total revenues wouldn't have been</p> <p>2 because you probably were putting on more events.</p> <p>3 Q. I'd like to talk for my last 20 minutes of</p> <p>4 the day about the Strike Force preacquisition bout</p> <p>5 data. Do you recall issues surrounding that data</p> <p>6 in your report?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Okay. You say in your report that when</p> <p>9 you removed the Strike Force preacquisition bout</p> <p>10 data from Dr. Singer's foreclosure regression the</p> <p>11 negative correlation between foreclosure and</p> <p>12 compensation share disappears in two of</p> <p>13 Dr. Singer's three measures of foreclosure; do you</p> <p>14 recall that?</p> <p>15 A. Yes.</p> <p>16 Q. And it's your opinion that it's</p> <p>17 appropriate to remove that data because of certain</p> <p>18 statistical tests that you ran; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And the statistical tests that you ran are</p> <p>21 called the Chow test; is that right?</p> <p>22 A. It's an F test.</p> <p>23 Q. A Chow test is a version of an F test; is</p> <p>24 that right?</p> <p>25 A. Yes.</p>

64 (Pages 250 to 253)

ROBERT TOPEL - HIGHLY CONFIDENTIAL

<p style="text-align: right;">254</p> <p>1 Q. Okay. Turn to paragraph 155, please.</p> <p>2 Okay. The Chow test, in your view, determines</p> <p>3 whether factors that contribute to the differences</p> <p>4 in UFC and Strike Force athletes' compensation have</p> <p>5 been controlled for; is that right?</p> <p>6 A. Where are you reading?</p> <p>7 Q. The first sentence. "I used a statistical</p> <p>8 test to evaluate whether Dr. Singer has adequately</p> <p>9 controlled for all factors that contribute to the</p> <p>10 differences in UFC and Strike Force athletes'</p> <p>11 compensation"; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And am I right that the null hypothesis</p> <p>14 that you tested was whether all of the 63</p> <p>15 regression coefficients from Dr. Singer's</p> <p>16 regression for pre-Strike Force acquisition bouts</p> <p>17 were identical to those coefficients for the Zuffa</p> <p>18 bouts?</p> <p>19 A. It's a joint hypothesis test. So we</p> <p>20 tested the hypothesis whether all of the</p> <p>21 interactions involving Strike Force were zero, were</p> <p>22 jointly zero.</p> <p>23 Q. Am I right that the null hypothesis does</p> <p>24 not mean that all regression coefficients are</p> <p>25 different as between Zuffa and Strike Force,</p>	<p style="text-align: right;">256</p> <p>1 we're testing the joint hypothesis that they're all</p> <p>2 zero. So does Strike Force have a material</p> <p>3 impact -- does accounting for differences in the</p> <p>4 structure of the model at Strike Force -- between</p> <p>5 Strike Force and Zuffa have a material impact on</p> <p>6 the fit of the regression, and the answer was</p> <p>7 yes.</p> <p>8 Q. Let me ask it this way. Your running of</p> <p>9 the Chow test allowed for no differences at all in</p> <p>10 the way in which fighter compensation is determined</p> <p>11 between the Strike Force data and the Zuffa bout</p> <p>12 data; is that right?</p> <p>13 MR. ISAACSON: Objection to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Differences at all? It tested what I just</p> <p>16 said. I don't think I can say yes to your</p> <p>17 question. We tested whether the effects -- the</p> <p>18 difference in the effects of these variables at</p> <p>19 Strike Force were jointly significant, and the</p> <p>20 answer was yes.</p> <p>21 Q. All right. Turn to paragraph 155. You</p> <p>22 cite the ABA section of antitrust law, second</p> <p>23 edition, 2010 at 1 -- page 179 in footnote 221; am</p> <p>24 I right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">255</p> <p>1 correct?</p> <p>2 A. Yeah. That was the point I was making.</p> <p>3 Q. The null hypothesis would be rejected even</p> <p>4 if only one out of the 63 coefficients was</p> <p>5 different between Strike Force bouts and UFC bouts,</p> <p>6 correct?</p> <p>7 A. No. No. It would -- the F test tests</p> <p>8 whether all -- you can reject the hypothesis that</p> <p>9 they're all simultaneously zero. It could be that</p> <p>10 some of them are significant or nonzero, some of</p> <p>11 them are zero. It's just the nature of a</p> <p>12 hypothesis test that --</p> <p>13 Q. But the hypothesis is whether all of the</p> <p>14 63 regression coefficients between the Strike Force</p> <p>15 preacquisition bouts were identical to the</p> <p>16 coefficients on the Zuffa bouts, right?</p> <p>17 A. Yeah. We're testing whether the</p> <p>18 structures of the two models are identical.</p> <p>19 Q. But the hypothesis is whether all of them,</p> <p>20 all of the coefficients as between the Zuffa data</p> <p>21 and the Strike Force data are the same, right?</p> <p>22 A. As I said, we're testing the joint</p> <p>23 hypothesis whether all the Strike Force -- they're</p> <p>24 included in the model as interactions between</p> <p>25 Strike Force and the regressor in the question and</p>	<p style="text-align: right;">257</p> <p>1 Q. And you cite that for the appropriate</p> <p>2 statistical response to finding that there are</p> <p>3 different coefficients for different sets of data</p> <p>4 on the explanatory variables, right?</p> <p>5 A. Yes.</p> <p>6 Q. And that's your basis for excluding the</p> <p>7 Strike Force data, right?</p> <p>8 A. We tested whether they came from the --</p> <p>9 they were generated by the same model, and the</p> <p>10 answer was no.</p> <p>11 THE VIDEOGRAPHER: Five minutes on disk.</p> <p>12 MR. CRAMER: Okay.</p> <p>13 BY MR. CRAMER:</p> <p>14 Q. The ABA manual that you relied upon --</p> <p>15 look at the last sentence of footnote 221 which is</p> <p>16 quoting from the ABA manual. It's on page 68. It</p> <p>17 says "If the regression model fails a Chow test</p> <p>18 'the appropriate model needs to adequately control</p> <p>19 for such differences"; do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Did you try and run a model that allowed</p> <p>22 the coefficients to vary as a means of controlling</p> <p>23 for the differences between the Strike Force data</p> <p>24 and the UFC data?</p> <p>25 A. Well, by definition when you put in the</p>

65 (Pages 254 to 257)